Supreme Court, U.S.
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(4) (4)

Nos. 94-1361, 94-1477

In The

Supreme Court of the United States

October Term, 1994

MARJORIE ZICHERMAN, Individually and as executrix of the estate of Muriel A.M.S. Kole, and MURIEL MAHALEK,

Petitioners/Cross-Respondents,

v.

KOREAN AIR LINES CO., LTD.,

Respondent/Cross-Petitioner.

On Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

JOINT APPENDIX

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Petition For Certiorari Filed February 9, 1995
Cross-Petition For Certiorari Filed March 6, 1995
Certiorari Granted April 17, 1995

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Note: the November 3, 1994 opinion of the Second Circuit was withdrawn on December 5, 1994, and an amended opinion was filed. The amended opinion is reproduced in the Appendix to the Petition for Writ of Certiorari at A1

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Zicherman, *et al.* v. Korean Air Lines, *et al.*
Assigned to: Judge Constance Baker Motley

CIVIL DOCKET FOR CASE # 83-CV-8428

Docket Date	Item No.	Filings – Proceedings
11/18/83	1	COMPLAINT filed; Summons issued and Notice pursuant to 28 U.S.C. 636(c); FILING FEE $120.00 RECEIPT # 83709 (gq) [Entry date 03/10/92]
1/4/84	5	ORDER of Multi District Panel transferring this action to District Court of The District of Columbia pursuant to judicial panel under 28 U.S.C. § 1407, with the consent of that Court assigned to Hon. Aubrey E. Robinson, Jr. (gq) [Entry date 03/10/92]
1/6/84	–	Interdistrict transfer to U.S.D.C., District of Columbia; Sent via Certified Mail # P 445 160 558 on 1/6/84. Mailed entire case file together with certified copies of order and docket sheet. (gq) [Entry date 03/10/92]
2/10/92	–	Certified Copy of Conditional Remand Order filed 2/7/92

		from Judicial Panel on Multi-district Litigation remanding case to transferor Court, Southern District of New York, U.S.D.C. (gq) [Entry date 03/10/92]
2/10/92	--	Case reopened (gq) [Entry date 03/10/92]
3/10/92	-	Mailed notice to U.S.D.C., District of Columbia, acknowledging receipt of file. (gq)
5/19/92	9	MEMORANDUM by Korean Air Lines Co., Inc. in response to plaintiff's motion to amend the complaint. (gq)
6/1/92	16	PRETRIAL SCHEDULING ORDER setting Pretrial conference for 10:00 6/25/92 . . . that leave to file amended complaint granted . . . motion to admit W. Paul Needham Pro Hac Vice granted . . . that sealed affidavit is due from Mr. Needham on or before 6/10/92 . . . that additional submissions will be due from all parties and proposed intervenor on or before 6/23/92 . . . SO ORDERED . . . (signed by Judge Constance B. Motley); Copies mailed (gq) [Entry date 6/12/92]
6/24/92	20	PROPOSED AMENDED COMPLAINT by Michael Kole, (Answer due 7/7/92 for Korean Air Lines,) amending

		[1-1] compliant [sic]; Summons issued. (gq)
7/9/92	28	ANSWER by Korean Air Lines, Ltd. (Attorney George N. Tompkins) to amended complaint; Firm of: Condon & Forsyth by attorney George N. Tompkins Jr. for defendant Korean Air Lines, Ltd. (gq)
9/21/92	41	PRE-TRIAL MEMORANDUM by Marjorie Zicherman, Muriel Mahalek, Michael Kole. (gq)
9/23/92	42	NOTICE OF MOTION by Korean Air Lines, Ltd. to strike plaintiffs' jury demand, to determine the law applicable to the determination of damages, to dismiss Muriel Mahalek as a party plaintiff, Return date 9/28/92 (gq)
9/23/92	43	MEMORANDUM OF POINTS AND AUTHORITIES by Korean Air Lines Co., Ltd., in support of [42-1] motion to strike plaintiffs' jury demand, [42-2] motion to determine the law applicable to the determination of damages, [42-3] motion to dismiss Muriel Mahalek as a party plaintiff. (gq)
9/23/92	44	NOTICE OF MOTION by Korean Air Lines Co., Ltd in limine to exclude at trial and at voir dire any reference to and

		evidence of negligence or wilful misconduct on the part of Korean Air Lines Co., Ltd., Return date 9/28/92 (gq)
9/23/92	45	MEMORANDUM OF POINTS AND AUTHORITIES by Korean Air Lines Co., Ltd., in support of [44-1] motion in limine to exclude at trial and at voir dire any reference to and evidence of negligence or wilful misconduct on the part of Korean Air Lines Co., Ltd. (gq)
9/23/92	46	NOTICE OF MOTION by Korean Air Lines Co., Ltd., in limine to dismiss claims for mental pain and suffering and to preclude the expert testimony of Robert L. Elzy and James J. Foody, Return date 9/28/92 (gq)
9/23/92	47	MEMORANDUM OF POINTS AND AUTHORITIES by Korean Air Lines Co., Ltd., in support of [46-1] motion in limine to dismiss claims for mental pain and suffering and to preclude the expert testimony of Robert L. Elzy and James J. Foody. (gq)
10/2/92	48	NOTICE OF MOTION by Korean Air Lines, Ltd., in limine to preclude the expert testimony of Conrad Berenson, Return date 10/2/92 (gq)

10/2/92	49	MEMORANDUM OF POINT AND AUTHORITIES by Korean Air Lines, Ltd., in support of [48-1] motion in limine to preclude the expert testimony of Conrad Berenson. (gq)
10/5/92	50	NOTICE OF MOTION by Marjorie Zicherman, Muriel Mahalek, Michael Kole to exclude testimony of Michael Kole, Return date: Not Indicated. (gq)
10/5/92	51	MEMORANDUM OF POINTS AND AUTHORITIES by Marjorie Zicherman, Muriel Mahalek, Michael Kole in opposition to [46-1] motion in limine to dismiss claims for mental pain and suffering and to preclude the expert testimony of Robert L. Elzy and James J. Foody. (gq)
10/5/92	52	OPPOSITION BRIEF by Marjorie Zicherman, Muriel Mahalek, Michael Kole re [42-1] motion to strike plaintiffs' jury demand, [42-2] motion to determine the law applicable to the determination of damages, [42-3] motion to dismiss Muriel Mahalek as a party plaintiff. (gq)
10/5/92	53	BRIEF by Marjorie Zicherman, Muriel Mahalek, Michael Kole re: On issue of mentioning

		prior jury's finding of wilful misconduct. (gq)
10/5/92	54	Request to charge the jury by Marjorie Zicherman, Muriel Mahalek, Michael Kole. (kg) [Entry date 10/06/92]
10/5/92	55	Request for Jury voir dire by Marjorie Zicherman, Muriel Mahalek, Michael Kole. (kg) [Entry date 10/06/92]
10/8/92	57	REPLY MEMORANDUM OF POINTS AND AUTHORITIES by Korean Air Lines, Ltd., in support of [44-1] motion in limine to exclude at trial and at voir dire any reference and evidence of negligence or wilful misconduct on the part of Korean Air Lines Co., Ltd. (gq)
10/8/92	58	REPLY MEMORANDUM OF POINTS AND AUTHORITIES by Korean Air Lines, Ltd., in support of [42-1] motion to strike plaintiffs' jury demand, [42-2] motion to determine the law applicable to the determination of damages, [42-3] motion to dismiss Muriel Mahalek as a party plaintiff. (gq)
10/8/92	59	REPLY MEMORANDUM OF POINTS AND AUTHORITIES by Korean Air Lines, Ltd. in support of [46-1] motion in limine to dismiss claims for mental

		pain and suffering and to preclude the expert testimony of Robert L. Elzy and James J. Foody. (gq)
10/8/92	60	Proposed voir dire questions by Korean Air Lines Co., Ltd. (gq)
10/8/92	61	Trial Exhibit list by Korean Air Lines Co., Ltd. (gq)
10/8/92	62	Witness list by Korean Air Lines Co., Ltd. (gq)
10/8/92	63	Request to charge jury by Korean Air Lines Co., Ltd. (gq)
10/13/92	64	SUPPLEMENTAL MEMORANDUM ON APPLICABLE MEASURE OF DAMAGES by Marjorie Zicherman, Muriel Mahalek, Michael Kole. (gq)
10/13/92	65	Supplemental Request to charge by Marjorie Zicherman, Muriel Mahalek, Michael Kole. (gq)
10/13/92	66	Proposed voir dire special questions by Marjorie Zicherman, Muriel Mahalek, Michael Kole to the jury. (gq)
10/14/92	67	SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES by Korean Air Lines Co., Ltd. in support of [42-2] motion to determine the law applicable to the determination of damages. (gq)

10/14/92	68	REPLY MEMORANDUM by Marjorie Zicherman, Muriel Mahalek, Michael Kole addressing deft's Supplemental Memorandum of Points and Authority as to [42-2] motion to determine the law applicable to the determination of damages (gq) [Entry date 10/15/92]
10/20/92	69	SUPPLEMENTAL MEMORANDUM by Korean Air Lines, Ltd. in support of [42-2] motion to determine the law applicable to the determination of damages. (gq)
10/29/92	70	MEMORANDUM OPINION ON PRE-TRIAL MOTION # 70622 granting [50-1] motion to exclude testimony of Michael Kole, denying [48-1] motion in limine to preclude the expert testimony of Conrad Berenson, denying [46-1] motion in limine to dismiss claims for mental pain and suffering and to preclude the expert testimony of Robert L. Elzy and James J. Foody, denying [44-1] motion in limine to exclude at trial and at voir dire any reference to and evidence of negligence or wilful misconduct on the part of Korean Air Lines Co., Ltd., denying [42-1] motion to strike plaintiffs' jury demand, denying [42-2] motion

to determine the law applicable to the determination of damages, denying [42-3] motion to dismiss Muriel Mahalek as a party plaintiff, that all of the foregoing claimed losses must be proved at trial. The references to DOHSA do not foreclose pltffs' rights under the Warsaw Convention, and pltffs retain their right to a jury trial. Decedent's mother, Muriel Mahalek, may proceed as a party pltff. Pltffs cannot recover for decedent's loss of the quality or enjoyment of life. Pltffs may recover for decedent's conscious pain and suffering, for loss of support, mental injury and grief as defined by this decision, loss of love, affection and companionship, loss of inheritance, and lost services. The testimony of decedent's husband, Michael Kole, is excluded . . . SO ORDERED . . . (Signed by Judge Constance B. Motley); Copies mailed. (gq) [Entry date 10/30/92]

11/12/92 71 NOTICE OF MOTION by Korean Air Lines Co., Inc. to amend the Court's Opinion and Order on Pre-Trial Motions dated 10/29/92 to include a Statement pursuant to 28 U.S.C. paragraph 1292(b) for an

		immediate appeal, Return date 11/30/92 (gq)
11/12/92	72	MEMORANDUM OF POINTS AND AUTHORITIES by Korean Air Lines, Ltd. in support of [71-1] motion to amend the Court's Opinion and Order on Pre-Trial Motions dated 10/29/92 to include a Statement pursuant to 28 U.S.C. paragraph 1292(b) for an immediate appeal. (gq)
11/12/92	73	OPPOSITION TO MOTION by Marjorie Zicherman, et al., re: for statement permitting an immediate appeal. (kg)
11/20/92	74	OPINION #70708 denying [71-1] motion to amend the Court's Opinion and Order on Pre-Trial Motions dated 10/29/92 to include a Statement pursuant to 28 U.S.C. paragraph 1292(b) for an immediate appeal; neither will 1292(b) certification be granted as to this court's 11/19/92 Amended Opinion on Pre-Trial Motions. (Signed by Constance B. Motley); Copies mailed. (kg)
11/20/92	75	AMENDED OPINION ON PRE-TRIAL MOTIONS #70622, that all of the foregoing claimed losses must be proved at trial. The references to DOHSA do not foreclose pltffs'

		rights under the Warsaw Convention, and pltffs retain their right to a jury trial. Decedent's mother, Muriel Mahalek, may proceed as a party pltff. Pltffs cannot recover for decedent's loss of the quality or enjoyment of life. Pltffs may recover for decedent's conscious pain and suffering, for loss of support, mental injury and grief as defined by this decision, loss of love, affection and companionship, loss of inheritance, and lost services. The testimony of decedent's husband, Michael Kole, is excluded. (Signed by Judge Constance B. Motley); Copies mailed. (kg)
11/24/92	77	REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT by Korean Air Lines, re: [71-1] motion to amend the Court's Opinion and Order on Pre-Trial Motions dated 10/29/92 to include a Statement pursuant to 28 U.S.C. paragraph 1292(b) for an immediate appeal. (kg)
12/8/92	78	Witness list by Korean Air Lines Co., Ltd. (gb)
12/8/92	79	Filed Korean Air Lines Co., Ltd's trial exhibit list. (gb)
12/14/92	–	Memorandum to Docket Clerk: Jury Trial begin & continued

		12/7/92-12/10/92. Trial concluded 12/11/92. Total trial days: 5 days. Jury Verdict See attached jury verdict sheet. Submitted by Gloria Katz (kg) [Entry date 12/16/92]
12/17/92	80	Proposed Special Interrogatories to the Jury filed by Korean Air Lines Co., Ltd. (kg) [Entry date 12/18/92]
12/17/92	81	NOTICE of Filing the attached Proposed Special Verdict Form with the court in order to complete the record in the above captioned matter by Korean Air Lines Co., Ltd. (kg) [Entry date 12/18/92]
12/18/92	82	BRIEF ON PRE-JUDGMENT INTEREST by Marjorie Zicherman, Muriel Mahalek, Michael Kole. (kg)
12/18/92	83	MEMORANDUM OF LAW by Korean Air Lines, re: regarding pre-judgment interest. (kg)
1/6/93	84	Transcript of record of proceedings filed for dates of 10/2/92 at 11:55 a.m. (kg)
1/6/93	85	Transcript of record of Proceedings filed for dates of 10/5/92 at 12:00 a.m. (kg)
1/26/93	86	MEMORANDUM OPINION #70977, pltff's are entitled to prejudgment interest on damages remedying both their

		pecuniary and non-pecuniary losses. Pre-Judgment interest will be calculated according to the formula at the average prime interest rate from the date of the accident to the date of judgment. (Signed by Judge Constance B. Motley); Copies mailed. (gb) [Entry date 01/27/93]
4/12/93	–	Case closed (gb) [Entry date 04/13/93]
4/12/93	87	MEMORANDUM OPINION #71338, both pltff and deft. agreed on the calculations of the discounted awards . . . pltff's submitted a proposed judgment with interest compounded annually., deft. submitted a proposed judgment based on the average yearly prime interest rate for each year from the date of the accident to the present. The court accepts the discounted rates submitted by the parties and defts calculation of simple interest based on average yearly prime rate from the date of the accident to the date of judgment . . . interest is added to determine the total award . . . (Signed by Judge Constance B. Motley); Copies mailed. (gb) [Entry date 04/13/93]

4/22/93	88	NOTICE OF MOTION by Michael Kole, Marjorie Zicherman, Muriel Mahalek to amend the final judgment, dated 4/12/93, Return date 4/30/93 (sc)
4/22/93	89	MEMORANDUM by Michael Kole, Marjorie Zicherman, Muriel Mahalek in support of [88-1] motion to amend the final judgment, dated 4/12/93 (sc)
4/22/93	90	NOTICE OF MOTION by Korean Air Lines Co., Ltd. for an Order granting KAL Judgment as a Matter of Law. (ND: 4/22/93 at 8:01P) (kg) [Entry date 04/26/93]
4/22/93	91	MEMORANDUM OF POINTS AND AUTHORITIES by Korean Air Lines Co., Ltd. in support of [90-1] motion for an Order granting KAL Judgment as a Matter of Law. (kg) [Entry date 04/26/93]
4/30/93	92	MEMORANDUM by Korean Air Lines, in opposition to [88-1] motion to amend the final judgment, dated 4/12/93 (gb)
5/4/93	93	OPPOSITION by Marjorie Zicherman, Michael Kole, Muriel Mahalek re: [88-1] motion to amend the final judgment dtd. 4/12/93. (kg)
5/6/93	94	MEMORANDUM OPINION #71460 denying [88-1] motion

		to amend the final judgment dtd. 4/12/93, denying [90-1] motion for an Order granting KAL Judgment as a Matter of Law. (Signed by Judge Constance B. Motley); Copies mailed. (gb) [Entry date 05/07/93]
5/20/93	95	NOTICE OF APPEAL by Korean Air Lines; from [94-1] order and judgment entered 4/13/93. Copies of notice of appeal mailed to Attorney(s) of Record: W. Paul Needham, Christopher Lovell. (jf) [Entry date 05/25/93]
5/25/93	–	Notice of appeal and certified copy of docket to USCA: [95-1] appeal by Korean Air Lines; Copy of notice of appeal sent to District Judge. (jf)
5/28/93	96	Transcript of record of proceedings filed for dates of December 7, 8, 9, 10, 1992 (kk)
6/3/93	97	NOTICE OF [CROSS-] APPEAL by Marjorie Zicherman from the May 7, 1993 denial of their motion to amend judgment. Copies sent to: George Tompkins, Jr., Esq. (jf) [Entry date 06/04/93]
6/4/93	–	Notice of appeal and certified copy of docket to USCA: Copy of notice of appeal sent to District Judge. (jf)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Zicherman, *et al.* v. Korean Air Lines, *et al.*, No. 93-7490

5/20/93	NOTE: See related case: 92-7722 (col) [93-7490]
5/21/93	Copy of district court docket entries and notice of appeal on behalf of Appellant Korean Air Lines, In filed. [93-7490] Form C due on 6/1/93. Form D due on 6/1/93. (col) [93-7490]
5/21/93	Copy of receipt re: payment of docketing fee filed on behalf of Appellant Korean Air Lines, In receipt #:192537. [93-7490] (col) [93-7490]
5/26/93	Appellant Korean Air Lines, In Form C filed, with proof of service; also includes Papers titled "Paragraph 3 (e) Filing" with Exhibits A-G. [93-7490] Form C deadline satisfied. (col) [93-7490]
5/26/93	Appellant Korean Air Lines, In Form D filed, with proof of service. [93-7490] Form D deadline satisfied. (col) [93-7490]
6/3/93	Copy of district court docket entries and notice of appeal on behalf of Appellee-Cross-Appellant Marjorie Zicherman in 93-7546 filed. [93-7546] Form C due on 6/14/93. Form D due on 6/14/93. (col) [93-7546]
6/9/93	Copy of receipt re: payment of docketing fee filed on behalf of Appellee-Cross-Appellant Muriel Mahalek in 93-7546, Appellee-Cross-Appellant Marjorie Zicherman in 93-7546 receipt #: 193628. [93-7546] (cv72) [93-7546]

6/15/93 Copy of Court Reporter Acknowledgment received. (col) [93-7490 93-7546]

6/23/93 Order dismissing the appeal for failure to file Forms C and D pursuant to CAMP filed. (col) [93-7546]

6/23/93 Certified copy of order dated 6/23/93 disposing of the appeal issued to district court. (col) [93-7546]

6/30/93 Appellee-Cross-Appellant Marjorie Zicherman in 93-7546, Appellee-Cross Appellant Muriel Mahalek in 93-7546 motion to reinstate appeal FILED (w/pfs). [410286-1] To SB (com) [93-7546]

6/30/93 Appellee-Cross-Appellant Marjorie Zicherman in 93-7546, Appellee-Cross Appellant Muriel Mahalek in 93-7546 Form C RECEIVED, with proof of service. [93-7546] (com) [93-7546]

6/30/93 Appellee-Cross-Appellant Marjorie Zicherman in 93-7546, Appellee-Cross Appellant Muriel Mahalek in 93-7546 Form D RECEIVED, with proof of service. [93-7546] (com) [93-7546]

7/1/93 Order FILED GRANTING motion to reinstate appeal [410286-1] by Appellee-Cross-ApMarjorie Zicherman, Muriel Mahalek, endorsed on motion form dated 6/30/93. By S.B. (com) [93-7546]

7/1//93 Appellee-Cross-Appellant Marjorie Zicherman in 93-7546, Appellee-Cross-Appellant Muriel Mahalek in 93-7546 Form C Filed, with proof of service. [93-7546] (com) [93-7546]

7/1/93 Appellee-Cross-Appellant Marjorie Zicherman in 93-7546, Appellee-Cross-Appellant Muriel Mahalek in 93-7546 Form D Filed, with proof of service. [93-7546] (com)[93-7546]

7/1/93 Scheduling order #1 filed. Record on appeal due on 7/23/93. Appellant's brief and appendix due on 7/30/93. Appellee's brief due on 8/30/93, Reply brief of Appellants-cross-Appellees due on 9/13/93. Argument as early as week of 10/4/93. (Pre-Argument Conference scheduled for 7/15/93 3:00pm). (com) [93-7490]

7/26/93 Notice of appearance form on behalf of Paul W. Needham, Esq., [sic] received. (Orig. to Calendar) (cma) [93-7490]

7/29/93 Record on appeal index in lieu of record filed. (Docs 1 - 64 listed on the index) (twn) [93-7490]

7/29/93 New scheduling order number #2 filed. New appellant's brief due date is 8/6/93. New appellee's brief due date is 9/7/93, New appellant's reply brief due date is 7/21/93. New argument week as early as 10/12/93. (SAB) (twr) [93-7490]

8/6/93 Appellant-Cross-Appellee Korean Air Lines, In in 93-7490 brief FILED with proof of service. (twg) [93-7490]

8/6/93 Appellant-Cross-Appellee Korean Air Lines, In in 93-7490 joint appendix filed w/pfs. Number of volumes: 3. (twg) [93-7490]

8/11/93	Notice of appearance form on behalf of Andrew J. Harakas, Esq., received. (Orig. to Calendar) (cma) [93-7490]
8/12/93	The CAPTION PAGE for this appeal has been AMENDED per letter dated August 6, 1993. (unv) [93-7490 93-7546]
9/1/93	Appellee-Cross-Appellant Marjorie Zicherman in 93-7490, Appellee-Cross-Appellant Muriel Mahalek in 93-7490 brief filed with proof of service. (rsk) [93-7490]
9/9/93	Proposed for argument the week of 10/25/93. (cac) [93-7490]
9/16/93	Set for argument on 10/28/93. [93-7490] (car) [93-7490]
9/21/93	Appellant-Cross-Appellee Korean Airlines, Co. in 93-7490 reply brief filed with proof of service. (to cal.). Satisfy appellant's reply brief due. (twn) [93-7490]
10/28/93	Case heard before Winter, Lumbard, Van-Graafeiland (TAPE: 54 & 55) (cag)
4/20/94	Record on appeal after index filed. 2 vols. (Doc# 1-63) (twr) [93-7490]
7/19/94	Letter from Appellant's counsel regarding change of attorney received (ond) [93-7490]
9/19/94	Appellee-Cross-Appellant Muriel Mahalek in 93-7490, Appellee-Cross-Appellant Marjorie Zicherman in 93-7490 28(J) letter received. (cv75) [93-7490]
11/3/94	Judgment of the district court is AFFIRMED in part, VACATED in part, and REMANDED in part by published signed opinion filed. (JEL) (cv75) [93-7546]

11/3/94	Judgment of the district court is AFFIRMED in part, VACATED in part, and REMANDED in part by published signed opinion filed. (JEL) (cv75) [93-7490]
11/3/94	Judgment filed. (cv70) [97-7490]
11/3/94	Judgment filed. (cv70) [97-7546]
11/10/94	Appellees-Cross-Appellants Muriel Mahalek, Marjorie Zicherman in 93-7490 Motion to Stay Issuance of mandate FILED (w/pfs). [582824-1] (cv75) [93-7490]
11/10/94	Appellees-Cross-Appellants Muriel Mahalek, Marjorie Zicherman motion to stay the mandate, FILED (w/pfs). [582824-1] (cv70) [93-7546]
11/13/94	Appellant-Cross-Appellee Korean Airlines, Co. in 93-7490 itemized and verified bill of costs received. (cv71) [93-7490]
11/17/94	Appellant-Cross-Appellee Korean Airlines, Co. in 93-7490 motion for costs FILED (w/ pfs). [585194-1] (cv71) [93-7490]
11/17/94	Appellant-Cross-appellee Korean Airlines, Co. in 93-7490 Petition for rehearing, and petition for rehearing in banc [585240-2] with proof of service filed. (cv71) [93-7490]
11/23/94	Appellees-Cross-Appellants Muriel Mahalek in 93-7490, Marjorie Zicherman in 93-7490 Verified Opposition to Appellant's Motion for costs with proof of service filed. (cv75) [93-7490]
11/30/94	Order FILED GRANTING motion to stay issuance of mandate pending application for writ of cert. from Supreme Court [582824-1] [endorsed on motion form dated

11/10/94] [By: JEL, EAVG, RKW, Cjj] (cv70) [93-7490]

11/30/94 Order FILED GRANTING motion to stay issuance of mandate pending application for writ of cert. from Supreme Court [589121-1] [endorsed on motion form dated 11/10/94] [By: JEL, EAVG, RKW, Cjj] (cv70) [93-7546]

11/30/94 Certified copy of the order dated 11.30.94 staying issuance of the mandate issued to the district court SDNY. (cv70) [93-7490]

12/5/94 Upon consideration of the petition, the opinion filed November 3, 1994, is withdrawn, and an amended opinion is filed. The petition for rehearing is denied. Judgment of the district court is AFFIRMED IN PART, VACATED IN PART, AND REMANDED IN PART, Amended published signed opinion filed (JEL). (cv75) [93-7490]

12/5/94 Upon consideration of the petition, the opinion filed November 3, 1994, is withdrawn, and an amended opinion is filed. The petition for rehearing is denied. Judgment of the district court is AFFIRMED IN PART, VACATED IN PART, AND REMANDED IN PART, Amended published signed opinion filed (JEL). (cv75) [93-7546]

12/5/94 Order FILED GRANTING, to the extent of dividing the cost of preparing the Joint Appendix between the parties. motion for cost [585194-1] by Appellant-Cross-Appellee Korean Airlines, Co., endorsed on

motion form dated 11/17/94, Before: JEL, EVG, RKW. (per CCC) (cv75) [93-7490]

12/5/94 Order stating that a petition for rehearing having been filed herein by counsel for appellant KOREAN AIR LINES CO LTD; upon consideration, it is ORDERED that said petition is DENIED and the opinion filed 11.3.94 is withdrawn and an amended opinion is hereby filed. FURTHER ORDERED that the judgment entered in the district court for the Southern Dist. of NY on 4.12.93 and appealed from is AFFIRMED IN PART, VACATED IN PART, and REMANDED IN PART to the said district court for further proceedings in accordance with the opinion of this Court, FILED [Before: JEL,EAVG,RKW/By:JM] (cv70) [93-7490]

12/5/94 Judgment filed. (cv70) [93-7490]

12/5/94 Judgment filed. (cv70) [93-7546]

12/6/94 ORDER stating that the pending suggestion for rehearing in banc is DISMISSED WITHOUT PREJUDICE to the filing of a subsequent petition for rehearing and a subsequent suggestion for rehearing in banc, addressed to the amended opinion; any subsequent petition for rehearing and suggestion for rehearing in banc must be filed within 14 days of the filing of the amended opinion; a party that has previously filed a suggestion for rehearing in banc may notify the clerk by letter that its previously filed suggestion for rehearing in banc should be recirculated to the Court,

	without the need for filing a revised suggestion for rehearing in banc, FILED. [By: GLIII] (cv70) [93-7490]
12/20/94	Correspondence of George N. Tompkins, Jr. dated 12/16/94, request that its previously filed suggestion for rehearing in banc be recirculated to the Court with respect to Point I and Point III only. (cv75) [93-7490]
1/20/95	ORDER stating that a petition for rehearing containing a suggestion that the action be reheard in banc having been filed by appellant Korean Air Lines Co Ltd, upon consideration the petition for rehearing is DENIED. Further noted that the suggestion for rehearing in banc has been transmitted to the judges for the court and no such judge has requested that a vote be taken thereon, FILED. [By: CCC] (cv70) [93-7490]
1/27/95	Judgment MANDATE ISSUED. (cv70) [93-7490]
1/27/95	Judgment MANDATE ISSUED. (cv70) [93-7546]
2/2/95	Correspondence of Kevin M. Hensley, Esq., dated 2.1.95, re: his request for recall of the mandate in light of this court's order dated 11.30.94 staying the mandate pending application to the Supreme Court for a pet. for cert., RECEIVED. (cv70) [93-7490]
2/7/95	Letter sent to district court recalling mandate in light of USCA order dated 11.30.94 staying issuance pending application for cert.. [re:93-7490]. (cv70) [93-7490]
2/7/95	Letter sent to district court recalling mandate in light of USCA order dated 11.30.94

staying issuance pending application for cert.. [re:93-7490]. (cv70) [93-7546]

2/21/95 Notice of filing petition for writ of certiorari for Appellee-Cross-Appellants Zicherman dated 2.9.95 filed Supreme Ct#: 94-1361. (cv70) [93-7490]

3/10/95 Notice of filing petition for writ of certiorari for Appellant-Cross-Appellee Korean Airlines, Co. dated 3.6.95 filed. Supreme Ct#: 94-1477. (cv70) [93-7490]

4/19/95 Certified copy of Supreme Court order GRANTING petition for writ of certiorari [631999-1] by Appellee-Cross-ApMuriel Mahalek, Marjorie Zicherman, endorsed on motion form dated 2/21/95. dated 4.17.95. (cv72) [93-7490]

4/19/95 Certified copy of Supreme Court order GRANTING petition for writ of certiorari [632000-1] by Appellant-Cross-AKorean Airlines, Co., endorsed on motion form dated 3/10/95. dated 4.17.95. (cv72) [93-7490]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Zicherman, *et al.* v. Korean Air Lines Co. Ltd., No. 93-7546

6/3/93 Copy of district court docket entries and notice of appeal on behalf of Appellee-Cross-Appellant Marjorie Zicherman in 93-7546 filed. [93-7546] Form C due on 6/14/93. Form D due on 6/14/93. (col) [93-7546]

6/9/93 Copy of receipt re: payment of docketing fee filed on behalf of Appellee-Cross-Appellant Muriel Mahalek in 93-7546, Appellee-Cross-Appellant Marjorie Zicherman in 93-7546 receipt #: 193628. [93-7546] (cv72) [93-7546]

6/15/93 Copy of Court Reporter Acknowledgment filed. (col) [93-7546]

6/15/93 Copy of Court Reporter Acknowledgment received. (col) [93-7490 93-7546]

6/23/93 Order dismissing the appeal for failure to file Forms C and D pursuant to CAMP filed. (col) [93-7546]

6/23/93 Certified copy of order dated 6/23/93 disposing of the appeal issued to district court. (col) [93-7546]

6/30/93 Appellee-Cross-Appellant Marjorie Zicherman in 93-7546, Appellee-Cross-Appellant Muriel Mahalek in 93-7546 motion to reinstate appeal FILED (w/pfs). [410286-1] to SB (com) [93-7546]

6/30/93 Appellee-Cross-Appellant Marjorie Zicherman in 93-7546, Appellee-Cross-Appellant Muriel Mahalek in 93-7546 Form C

RECEIVED, with proof of service. [93-7546] (com) [93-7546]

6/30/93 Appellee-Cross-Appellant Marjorie Zicherman in 93-7546, Appellee-Cross-Appellant Muriel Mahalek in 93-7546 Form D RECEIVED, with proof of service. [93-7546] (com) [93-7546]

7/1/93 Order FILED GRANTING motion to reinstate appeal [410286-1] by Appellee-Cross-ApMarjorie Zicherman, Muriel Mahalek, endorsed on motion form dated 6/30/93. By S.B. (com) [93-7546]

7/1/93 Appellee-Cross-Appellant Marjorie Zicherman in 93-7546, Appellee-Cross-Appellant Muriel Mahalek in 93-7546 Form C filed, with proof of service. [93-7546] (com) [93-7546]

7/1/93 Appellee-Cross-Appellant Marjorie Zicherman in 93-7546, Appellee-Cross-Appellant Muriel Mahalek in 93-7546 Form D filed, with proof of service. [93-7546] (com) [93-7546]

7/1/93 FOR A LIST OF COMPLETE DOCKET ENTRIES PLEASE SEE THE LEAD APPEAL, DOCKET NUMBER Lead Number: 93-7490. (com) [93-7546]

8/12/93 The CAPTION PAGE for this appeal has been AMENDED per letter dated August 6, 1993. (unv) [93-7490 93-7546]

9/21/93 For judicial statistical purposes, the last brief filed on this consolidated or cross-appeal was recorded on the LEAD appeal on 9.21.93. (und) [93-7546]

10/28/93	Case heard before Winter, Lumbard, Van-Graafeiland on tape #54 & 55) (cag) [93-7546]
11/3/94	Judgment of the district court is AFFIRMED in part, VACATED in part, and REMANDED in part by published signed opinion filed. (JEL) (cv75) [93-7546]
11/3/94	Judgment filed. (cv70) [93-7546]
11/10/94	Appellees-Cross-Appellants Muriel Mahalek and Marjorie Zicherman motion to stay the mandate, FILED (w/pfs). [589121-1] (cv70) [93-7546]
11/30/94	Order FILED GRANTING motion to stay issuance of mandate pending application for writ of cert. from Supreme Court [589121-1] [endorsed on motion form dated 11/10/94] [By: JEL, EAVG, RKW, Cjj] (cv70) [93-7546]
12/5/94	Upon consideration of the petition, the opinion filed November 3, 1994, is withdrawn, and an amended opinion is filed. The Petition for rehearing is denied. Judgment of the district court is AFFIRMED IN PART, VACATED IN PART, AND REMANDED IN PART, Amended published signed opinion filed. (JEL). (cv 75) [93-7546]
12/5/94	Judgment filed. (cv70) [93-7546]
1/27/95	Judgment MANDATE ISSUED. (cv70) [93-7546]
2/7/95	Letter sent to district court recalling mandate in light of USCA order dated 11.30.94 staying issuance pending application for cert.. [re: 93-7546]. (cv70) [93-7546]

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

MARJORIE ZICHERMAN, individually and as Executrix of the Estate of Muriel A.M.S. Kole, and MURIEL MAHALEK, Plaintiffs	)	CIVIL ACTION NO. 1983-8428 (Motley, J.)
v.	)	
KOREAN AIRLINES, INC., Defendant	)	

AMENDED COMPLAINT AND
JURY DEMAND

PARTIES

1. The plaintiff Marjorie Zicherman ("Zicherman") is the sister of the decedent Muriel A.M.S. Kole, and is a resident of Massachusetts. She is the duly appointed Executrix of the decedent's estate.

2. The plaintiff Muriel Mahalek ("Mahalek") is the decedent's mother, and is a resident of New York.

3. The defendant Korean Airlines Inc. ("KAL") is a South Korean corporation authorized to conduct business in New York.

JURISDICTION

4. This court has jurisdiction under 28 U.S.C. §1332 because of the complete diversity of citizenship of the parties, and because the amount in controversey [sic]

exceeds $50,000.00; under the Warsaw Convention, 49 Stat. 3000, *reprinted at* 49 U.S.C. App. §1502; and under the Death on the High Seas Act, 41 Stat. 537, *reprinted at* 46 U.S.C. App. §761 *et seq.*

COUNT I
(WARSAW CONVENTION)

5. On or about September 1, 1983, KAL Flight 007 was shot down by a Soviet jet fighter.

6. Flight 007 had been en route from New York City to Seoul, Korea.

7. Flight 007 crashed into the Sea of Japan beyond one marine league from the shore of the United States or its territories or dependencies.

8. The decedent, Muriel A.M.S. Kole, was killed in the crash of Flight 007.

9. The decedent's death was caused by the willful misconduct of KAL.

10. KAL is liable to the plaintiffs under the Warsaw Convention for all damages they sustained as a result of the decedent's death.

WHEREFORE, the plaintiffs demand judgment against KAL for their pecuniary damages, for their grief and mental anguish, for the loss of the decedent's society and companionship, and for the decedent's conscious pain and suffering prior to her death, in the amount of $5,000,000.00 (five million dollars) plus interest and costs.

COUNT II
(DEATH ON THE HIGH SEAS ACT)

11. The plaintiffs incorporate by reference the allegations made in paragraphs 1-10 of this amended complaint.

12. KAL is liable to the plaintiffs under the Death on the High Seas Act, 46 U.S.C. App. §761 *et seq.*, for all damages they sustained as a result of the decedent's death.

13. KAL is liable to the plaintiffs under Korean law, applicable to this case pursuant to 46 U.S.C. App. §764, for the plaintiffs' mental anguish and loss of the decedent's society and companionship.

WHEREFORE, the plaintiffs demand judgment against KAL for their pecuniary damages, for their grief and mental anguish, for the loss of the decedent's society and companionship, and for the decedent's conscious pain and suffering prior to her death, in the amount of $5,000,000.00 (five million dollars) plus interest and costs.

COUNT III
(CONSCIOUS PAIN AND SUFFERING)

14. The plaintiffs incorporate by reference the allegations made in paragraphs 1-13 of this amended complaint.

15. The decedent suffered conscious terror and pain after Flight 007 was first hit by missles [sic] from a Soviet interceptor, and before her death.

WHEREFORE, the plaintiff Marjorie Zicherman, as Executrix of the Estate of Muriel A.M.S. Kole, requests judgment against KAL in the amount of $5,000,000.00 (five million dollars), plus interest and costs.

JURY CLAIM

The plaintiffs claim a trial by jury on all counts.

Marjorie Zicherman,
individually as [sic] as
Executrix of the
Estate of Muriel
A.M.S. Kole, and
Muriel Mahalek.
By their attorney,

/s/ W. Paul Needham

W. Paul Needham
WN3518
Needham & Warren
4 Liberty Square
Boston, MA 02109
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Admitted *pro hac vice*
to the U.S. District
Court for the Southern
District of New York

DATED:

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

TESTIMONY OF MARJORIE ZICHERMAN

* * *

[p. 227] DIRECT EXAMINATION

BY MR. NEEDHAM:

Q. Marjorie, Muriel Kole was your sister, wasn't she?

A. Yes. Yes, she was.

Q. How much older than you was Muriel?

A. Six years older.

Q. Where with [sic] you born and brought up?

A. We – I was – we were all born – my family was born in Brooklyn, the Canarsie section of Brooklyn.

Q. That is where you grew up with your sister?

A. That's correct.

Q. Where do you live now?

A. I live in Swampscott, a town outside of Boston.

Q. Your married name is Zicherman?

A. That's correct.

Q. Your maiden name was Mahalek, the same as your mother and the same as your sister?

A. Yes.

Q. Could you tell me a little bit about your sister, Muriel, and her career going through school, and if you

[p. 228] could sort of relate it to where she was in school and where you were in school, that might be helpful.

A. Well, in grade school I was at P.S. 242 which is the school she went to when she started. That is a grammar school. While I was in P.S. 242 she was at P.S. 114, the higher elementary school, and then I went to junior high school 211, and when – at that time she went to Prospect Heights High School in Brooklyn, New York, and when I graduated junior high school 211, I followed, went to that particular – same high school which is Prospect Heights High School in Brooklyn, New York.

Q. Where did your sister go after Prospect Heights High School?

A. She received a New York State Regent's scholarship in nursing and went to Brooklyn Hospital, a three year diploma program which she won that scholarship to attend, full scholarship.

Q. After that did she go on to any further studies in the area of nursing, public health?

A. Yes. When she graduated Brooklyn Hospital, she was working even when she was a student nurse at Brooklyn Hospital.

After she graduated from Brooklyn Hospital she worked in Flushing Hospital in the intensive care unit. That was around 1963 to 1964.

[p. 229] In 1965 she worked at the World's Fair, the New York State pavillion in the emergency service.

Q. Where were you in school at that time?

A. I was, when I graduated – I was in high school, and then I, while she was in – after she graduated I went to – she had already graduated, gotten her diploma in nursing, I went to New York City Community College. It was a two-year R.N. degree program. That is from 1965 to 1967.

Q. Did you have a chance during any of the period of time when you were in school to visit your sister at any of her jobs?

A. Well, we, when she decided to become a nurse, I decided to become a nurse and she decided to become a nurse when she was 11 years old, I was 5, so I started – I was really preparing myself to follow in her footsteps since I was 5 years old.

She – when she went to nursing school and she – it came to fruition that she attended Brooklyn Hospital, I had already started taking specific courses in science and biology and excelled in those fields and she would help me in those studies in those fields, she would give me her textbooks, smaller ones, obviously, but I was very interested to follow in her footsteps.

Q. As she continued on, could you continue on with the chronology of what Muriel was doing from 1966, 1967 on [p. 230] and just sort of hit the highlights of the different jobs and positions that she had?

A. After the New York – the New York World's Fair she – she married in '63. She moved to Albany and she had a manpower training scholarship and became an instructor of nursing.

After that she went to the Capital District Psychiatric Center at which time I already had graduated and became an R.N. and due to her intensive care training and her interest in it and how exciting it sounded to me, I entered into the emergency room at Brookdale Hospital and started – I worked there for three years.

Then while she was going into the department of psychiatry in the Capital District Psychiatric Center and said how exciting that was and we were constantly talking about it and I would go up to Albany and she would come to Brooklyn and visit me, she took a lot of interest and met with my instructors, I decided – I followed through and I entered into the field of psychiatry also. I became a psychiatric nurse.

Q. All right.

During the period of time that she was at the Capital District Psychiatric Center, did you have any opportunities to visit with her there?

A. Oh, yes, many times.

[p. 231] Q. What sorts of things did she do there?

A. She was developing new units. She felt that to make an impact, I guess, in the world, you needed to do different exciting things that were innovative to make some positive changes and that there was a lot of room for positive change in the field of psychiatry.

She would show me the units, introduce me to the staff, her friends, her colleagues, and it really was an up and coming field in 19 – at that point it was – in the early '70s, very exciting.

Much of her knowledge I utilized when I came to the Boston area. I became a clinical coordinator of psychiatry and opened up a brand new unit and utilized many of the ideas that my sister utilized just prior to that in opening up the new units at the Capital District Psychiatric Center in outreach and family therapy.

There was all new and innovative techniques that we utilized in the nursing profession.

Q. Did your sister have any training in family therapy?

A. Yes. She took a post-graduate course following her – she received her degree, Bachelor's degree, in nursing, and following that she received a – she went at night, this was all at night, she received a one-year post-graduate certificate in family therapy from the Albany [p. 232] medical center. It was a post-graduate training course.

Q. After the Capital District Psychiatric Center, where did Muriel go from there?

A. She went to the New York State Health and Occupational Services Division. It was a special division in which she utilized the nursing training as well as some of her innovative techniques in family therapy and outreach.

Q. At that time did she have a Master's degree?

A. She received her Master's degree from Russell Sage, it was 1977 that she received that degree.

Q. What was that degree in?

A. It was a Master's degree in health sciences. It would broaden her. She didn't want to stay only in nursing. She needed to broaden the field – her field of expertise and that way she could expand in different roles and then wouldn't be held into one position; could expand upon it and utilize some of her innovative techniques.

Q. Did you have a chance to visit her at all with her job at the New York State Department of Education?

A. Yes. She invited me. There I met her colleagues. I felt like I was part of the staff in some ways.

Q. What sorts of things was she doing on a day-to-day basis?

A. She had developed new audio visual material, [p. 233] materials for training programs. There were –

Q. Just what she did on day-to-day basis?

A. Day to day? She had staff development. She would organize the meetings, the criteria for specific training of employees, new employees, as well as employees of other institutions would invite her in and she would lecture and present herself in terms of lending her expertise to, and staff development, to the heads of each department in other institutions.

Q. For how long was she in that position?

A. Approximately five years, I believe.

Q. What did she do after that?

A. She entered into a smaller division within the larger division which was the civil rights division. It was a small group of individuals, and what she would do was

look into the – those programs that were funded, federally funded, were mandated to hire specifically minorities, handicapped people, a broad range of people that would not have been hired had it not been for her actually going into these areas and seeing that it was expanded upon and that these people could be hired.

Q. That was what year did she go into the civil rights division, do you know?

A. I believe it was 19 – it could have been '79.

Q. At some time after she had been there for a [p. 234] while, did she, was she involved in a car accident?

A. Yes.

Q. Do you know when that was?

A. Yes; February 1, 1981.

Q. Do you know what happened?

A. She was – was going from, I think, Utica to Syracuse in a state car. It didn't have a radio in it and she was not aware of the icey [sic] conditions on the road.

Apparently, many cars had gone off the road. She was not aware of that but her car veered off on a patch of ice, it hit a steel pole and she, the car and her ended up in a ravine. The state police had to remove her with the Jaws of Life to get her out of that vehicle.

Q. What problems did she have as the aftermath of that accident?

A. Numerous problems; neck, head, back. She injured her hand, her left hip was bruised very badly, and

she was hospitalized for a short period of time, was on crutches as soon as she could.

Q. Was she on crutches for an extended period of time?

A. A few months; maybe seven months or so. I don't know exactly.

Q. After the crutches, did she have any other sort of assistance when she walked?

[p. 235] A. She really was determined to get off the crutches even though she wasn't quite ready. She was determined to get better right away and was going back to work.

I think she went into work with crutches. She then went from crutches to a cane, but I thought she was doing it too fast, but she insisted that she use a cane, and she did, but it was – she was in a lot of pain.

Q. At some point did she go out, leave from that job at the New York State Department of Education because of this disability?

A. She finally did leave. The exact date, I couldn't tell you. I know that she was not going in for a period of time, and about a year or so, and then she was terminated by the state.

Q. During that period of time did you ever have an opportunity to see her, meet with her, talk with her?

A. I saw her all the time. She came to Boston. I would go to Albany.

Q. When were you married?

A. I was married in – August 19, 1978.

Q. Was your sister at the wedding?

A. Oh, yes.

Q. Did she help you out in any way with any of the wedding arrangements?

A. Well, my husband couldn't afford a wedding band [p. 236] so I went out and I bought a wedding band for myself. When I told her over the phone that I had done that, she said – she didn't say anything, but when she came to the wedding, I had the wedding band out and I gave it to my husband to put it in his pocket and she gave him a ring to give to me for my wedding. She gave me my wedding band; not my wedding band; my wedding ring.

Q. He didn't mind that?

A. No. He kind of liked that, I think. He was – no, he didn't mind it; he didn't mind it at all.

Q. Did she give you any other help or support when you were first married?

A. Yes. She also gave me a check for $2,000 to pay for the total reception; everything, flowers, everything, everything, the clergy, it was completely paid for, and she also brought a gift of a large beautiful spinning wheel, just a beautiful – I still have it. It is a beautiful gift. She paid for the whole – the wedding, she made the wedding.

Q. Anything else she did for you and your husband?

A. Well, she kept saying, why don't you buy a house, and I said I can't buy a house yet, I am not ready to buy a house.

She said, why don't you start looking around and she called a couple of brokers in the Boston area and she [p. 237] said, let's go look at houses, so we did. We went out and looked at houses and she saw a couple of houses and she didn't like them and whatever.

Then there was one house that was very nice and she said to me, if you would like, you can buy this house. I said I don't have that kind of money to buy a house right now. She said, I will give you the down payment for the house. It is a very good time. It was 1978 and she was actually right. The market was all right.

Q. What was your husband doing then; what was he doing?

A. Well, he had just stared a practice.

Q. What kind of a practice?

A. He is a pediatric, children's dentistry. We came up to the area, and he was struggling, he was drawing very, very little money at the time and it would have been, it was up to me really to support us both until he could draw a little more money, but that took quite a few years. It took about three years.

Q. Eventually he did get things going?

A. Around 1983, late 1983, yes, he did.

Q. During this period of time – may I approach the witness, your Honor?

THE COURT: Yes.

MR. TOMPKINS: Sidebar, your Honor?

[p. 238] THE COURT: Yes.

* * *

[p. 243] MR. NEEDHAM: May I approach the witness, your Honor?

THE COURT: Yes.

Q. Mrs. Zicherman, I want to show you a couple of black and white photographs that were marked as Plaintiffs' Exhibits Number 20 and 21, and ask if you could look at those photographs and show them to the jury and indicate who is identified in the picture.

THE COURT: Refer to the number on the back.

THE WITNESS: Yes.

Q. 21.

A. It says Exhibit Number 21. The blonde woman standing there is my sister as a student nurse at Brooklyn Hospital.

THE COURT: We can pass it later.

Q. The next exhibit is Exhibit Number 20. If you could indicate to the jury what that is as well?

A. Yes. This is also at Brooklyn Hospital in New York City and here she is, I believe they are demonstrating interviewing skills, and she is sitting right over here on the left, or the right.

Q. Exhibit Number 26, could you indicate for the jury what is depicted in Exhibit 26?

A. This is, I believe this is 1977 or 1978 in which [p. 244] she took me to a conference and I am sitting over in the center. This is in Albany and she is – it is kind of an informal discussion and she was taking me around and meeting her colleagues.

Q. Exhibit 23, if you could indicate to the jury who is in that picture and where and when it was taken?

A. This is, I believe, 1978 or 1979 and it is at my home at the time in Marblehead, Massachusetts and that is my husband, Alan, and my sister, we called her Cookie or Muriel, and he kind of had a habit, he used to go like that on her head. I was a cute way of affection.

Q. The next picture is Exhibit 24.

Could you indicate who is in that picture?

A. This was at my – I believe, another social event. I am not sure which one. It may have been my niece's wedding, I believe it was, and my sister is the blonde here and that is myself in the red dress.

Q. Could you take a look at the last picture, number 25?

A. This is in 19 – it may have been '82, I am not sure. It was in 1982. It is the same dress. We shared clothing all the time. That is the same dress and it is my sister.

Q. Same dress as what?

A. It is the same dress. We would share our [p. 245] clothing. She would buy clothes and say let's trade this dress in these two pictures. We did that all the time. That

– we just were the same size. She was only two inches shorter than myself but we were exactly the same body build.

Q. Did your sister ever come down to visit you and your husband, Alan, in Boston?

A. Yes, quite frequently.

Q. When she did come to visit you where would she stay?

A. She had a room in my house. She had her own bedroom. When I bought that house, she had a room there.

Q. Did she come to see you at all in 1982 after she had her accident?

A. Yes. Yes, she did; many times.

Q. When your sister came to visit, did she often stay for periods of time?

A. Yes. Weekends, before – do you mean before '82 or –

Q. For the moment I am just in the period after the accident in '82 but let me break it down.

Prior to her having the accident how often would she come to visit you in Boston?

A. Prior to the accident, two or three – prior to the accident –

Q. I just need an estimate. I don't need an exact [p. 246] number.

A. Two or three times, possibly.

Q. After the accident, when she came down to visit you, how long did she stay?

A. She would stay long weekends and during the week sometime.

Q. During the period of time when she was visiting, did you have any discussions about your career and her career, that sort of thing?

A. We had discussions until the sun came up in the morning. We would not go to sleep. When she came in, we just talked and talked and talked. There was no time limit on it.

The sun would literally come up the next day and we would have to say, we have to go to sleep, we have to stop talking. We just connected so well in terms of so much information. She was just a wealth of information.

Q. At some point did she come to Boston on a more regular basis?

A. Yes. Kind of '81, 1981, late '81, she stayed quite frequently in my home and was bringing things from Albany to my house into that room.

THE COURT: Speak into the microphone, please.

THE WITNESS: I am sorry.

She would bring boxes and things.

[p. 247] Q. At some point did she have an apartment in Boston?

A. Yes, she did.

Q. Where was that?

A. 189 Bay State Road in Boston – Bay State Road in Boston she had an apartment.

Q. At the time when she was in Boston, did you observe her recovery, if any, from the automobile accident she had?

A. She still had pain. She stopped using the cane towards somewhere in '83, late '83. She wasn't using the cane anymore but she still had a limp, a slight limp, and she was still in pain and was using the TNS stimulator to relieve the pain.

Q. What was that, please, the stimulator?

A. It is an electronic device that you have leads that go in the muscle and it prevents muscle spasm. It relieves the spasm. It is quite effective.

That item and therapy were the two things that were quite effective in relieving the pain that she had.

She didn't complain much of pain. She was not a complainer but you could see in her face that she was.

Q. At the time of this air accident she still had some problems, didn't she?

A. You mean at the time – excuse me.

[p. 248] Q. At the time of the accident she was still having problems in the aftermath of the automobile accident?

A. Oh, yes, yes, she was.

Q. Had you observed her over the period of six months prior to the air crash getting better or getting worse from those problems?

A. She seemed to be getting much better, much better, and she went from crutches to cane and then not the cane so that is a progression towards being able to bear weight on that left leg, but I guess she still had the pain and was not able to stand or bear weight for very long periods of time.

Q. During the time when she was in Boston, did you ever have any health situations that she helped you out with?

A. Well, in September of '81 I was visiting her, I believe it was September, at the Bay State apartment, and I was pregnant, I was three months pregnant and I started bleeding, and the next day I was to have an ultrasound, just a regular routine ultrasound.

She, since I was very close, it was in the Boston area that my physician was, she immediately called the physician. He told me to stay on bed rest at her apartment.

The next morning she took me over to Beth Israel Hospital which I had an ultrasound taken and she was in the [p. 249] room and saw right on the ultrasound screen that the fetus was not alive.

Q. Did she spend time with you in the aftermath of that?

A. Yes. She – my physician suggested that I not have a D and C if it wasn't necessary to go under anesthesia.

She was a firm believer if you didn't have to go under anesthesia, not to do it, and – but the psychological difficulty of carrying a non-viable fetus or non-living fetus for ten days or two weeks or until you could naturally spontaneously abort was preferable to – I didn't want to go under anesthesia if I didn't have to, I was nervous about it and she said she would stay with me until I spontaneously aborted that fetus, and she did. I stayed at her apartment for 10 days and she cared for me and helped me.

Q. After that did you get pregnant again?

A. Yes, I did.

Q. At the time of the air crash in this case, how far along were you?

A. I was going into my sixth month when the airplane was blown up.

Q. Prior to the airplane flight did you talk about the upcoming child?

A. Yes. She was very excited about becoming an [p. 250] aunt. She was devastated by the loss of the first baby. She had prepared to become an aunt.

I mean, she was really very, very excited about it and it was almost like it was going to be her baby in a sense.

We were very close. We wanted to go through the birthing classes together. She would help me as a coach and then when that – when the baby died, she became very depressed by it but she was encouraging to me by helping me. We helped each other.

It was a symbiotic relationship, and she, when the second baby was – it – I was in my fifth month, she – she could feel the baby and she started naming names and she bought me the maternity outfits. She was the greatest person in the world you would have as a person who supported you, and was very excited, extremely excited over the prospect of becoming an aunt and taking over this baby, really helping out and encouraging me to not worry about that delivery.

I was very excited about it, too, so it was wonderful. It was a wonderful time in my life.

[p. 251] Q. And did you at that time when you were pregnant prior to the flight, ever have any discussions with your sister about what she would do with the west [sic] of her life, if she got better from this accident?

A. She was always a person who was very enthusiastic very vivacious, had many different options and plans. I mean, she could have gone back to work. She had a number of different options. She had a number of different options with her life. She was not a person to sit back and do nothing. She was a person who had worked always, it was full-time work, full-time school at the same time for 20 years and she was just ready to do something with her life, I believe when she returned – if she had returned, she would have definitely worked or done something with her life that I could have participated in, actually.

Q. And did she ever have children?

A. No. She never had children.

MR. NEEDHAM: May I approach the witness, your Honor?

THE COURT: Yes.

Q. Ms. Zicherman, I am showing you a book that was marked Exhibit 17, and I was wondering if you could tell the jury what the book is about and read the inscription in the front of that book.

A. One week before she boarded the flight, she gave [p. 252] me this book, and it's called Speaking of Sisters. It's a book with many different passages about what a sister meant to her and what special thoughts that had reminded her of me, and she gave me the book and started restating some of these different passages, but would you like me to read the inscription?

Q. Yes.

THE COURT: Is it something in evidence?

MR. NEEDHAM: We took a xerox and Plaintiff Exhibit 17, so that has been marked with a number, but a complete exhibit copy has been marked as Exhibit 17.

Was there some other objection?

MR. TOMPKINS: I have only produced a one-page document. It has not been produced, the whole document.

MR. NEEDHAM: One page, I think the rest of it should have been attached, if Mr. Tompkins would like to see the rest of it.

THE COURT: Suppose we take a break at this time. The jury is excused.

(Jury leaves the courtroom)

* * *

[p. 259] (The jury enters the courtroom)

THE COURT: All right. Would you like to proceed.

MR. NEEDHAM: Yes.

May I approach the witness, your Honor?

THE COURT: Yes.

MARJORIE ZICHERMAN, resumed.

DIRECT EXAMINATION

BY MR. NEEDHAM:

Q. Ms. Zicherman, I want to show you a copy of what has been marked as Plaintiff Exhibit No. 28. Can you tell me what that is?

A. This is the last will and testament of Muriel A.M.S. Kole, my sister.

Q. And prior to the break I was showing an inscription that was in front of a book that you received from your sister on August 23, 1983, and I want to show you what is now marked Plaintiff Exhibit No. 17 and ask if you can read that inscription to the jury?

[p. 260] A. It's dated August 23rd, 1983. "To my dearest Marjorie, you are the most wonderful sister anyone could ever hope to have. Lucky me. Unconditional love, Margie. Love always, Cookie."

Q. When did you first learn that your sister was going to be taking this flight to Seoul, Korea on KAL 007?

A. I believe it was, it may have been June – late spring, early summer.

Q. Was she going to Seoul on KAL 007?

A. She was being sponsored by the Business and Professional Women's organization to lecture on nutrition in Osaka, Japan.

Q. And when was the last time you saw her before she got on that airplane?

A. August 23, 1983, she gave me that booklet. It was a Hallmark booklet of poems. It's about sisters and what their relationship was like.

Q. And did you talk to her at all between the 23rd and the time she left on the airplane from Kennedy Airport?

A. I may have, but I don't recall.

Q. Did you talk to her when she was at the airport?

A. Yes, she called me from the airport.

Q. What did she tell you?

A. We had some light talk about how excited she was about going on the trip and how she would get some special [p. 261] hair combs for me, Japanese combs, small trinkets. That is what I wanted from Japan. And she said she would get me some very unusual, special ones.

There was some other conversation which I don't recall. Well, actually how the baby was and how excited she was and take care of yourself.

Then her voice became very, I would say, troubled and kind of in a whisper in a low key, and she said that

the plane was taking a different route, and I didn't understand what she meant. And I said, "What do you mean?" And she said, "Well, something about way points." And I said, "What is a way point?" And she said, "Well, that's where a plain [sic] goes.

Q. What else did she say?

A. She said, "I don't want you to be upset or very frightened, but I might not be coming back."

Q. Did she tell you anything about a letter?

A. She said that she was sending me a letter that I could look for this letter and that inside the letter was an inner envelope and the envelope should be opened if she did not run [sic] from this particular flight.

Q. And did you get that letter?

A. Yes, I did.

Q. And did you get that letter after finding out that the plane had crashed?

[p. 262] A. Yes, I did.

Q. How did you find out about the plane crash?

A. I saw news on the 6 o'clock news there was some mention of a missing airplane, Japanese flight, whatever. It didn't really connect at that point. But later on in the evening, somehow I became very concerned. The letter was in the back of my mind, and when her the plane was missing – there was more accounts of this plane being missing and the Japanese flight – it did connect in my head that there might be a connection between what my sister said and this plane being missing. And I wasn't

sure of the flight number. I didn't know if it was a 007 flight. She may have said that on the phone, but I couldn't tell you exactly that if she said that or not. She may have mentioned the flight number, but I was kind of listening to other things when she was talking.

Q. And when did you get the letter?

A. I received the letter two days after the plane was downed.

MR. NEEDHAM: May I approach the witness, you Honor?

THE COURT: Yes.

Q. I would like to show you what has been marked as Plaintiff Exhibit 27. Is that a copy of the letter that you got from your sister??

[p. 263] A. Yes, it is.

Q. And the letterhead on that is Sugarbush Inn. Do you know why that is on the letter she sent from Kennedy?

A. She may have been there at one time, I believe. She was there some vacation. She used stationery from different places because she was quite a frugal person.

Q. If you would please read that letter to the jury?

A. It's dated August 30, 1983. "Dear Margie, take good care of yourself. Don't be too upset about Cambridge – it was too good to be true. I had bad vibes about the 'Feathers' being involved in the marketing since the beginning. Eh, we've only just begun. I called Sue Gifford Fliegelman today" and in parentheses is "Tuesday" –

"and she said her lawyer told her about the company having serious problems Monday noon. It seems that her New York City Fifth Avenue lawyer had some contact with the Cambridge lawyer last week. All the crooks hand out together obviously. She called him Monday to ask his advice about investing $50 in a booth at the BPW Businesswoman's Fair I told her about and he advised her not to. To talk about inside information and bailing out early.

"I am in the airport now and have already gotten my seat. I am really excited about this trip – very low calorie diet paper and all. What a bust. It will be great fun. People are off to all parts of the world – too bad [p. 264] nobody has any money. Hooray it's for me. I've enclosed a few coupons for milk to fatten you up. Ha, ha. I'll be sure to look for some special hair combs and ornaments. Instead of the Philippines the plane is stopping in Anchorage, Alaska. Quite a difference in latitude.

"I've enclosed a small envelope to be kept by you and only opened in case I don't make it back for whatever reason. Nothing morbid. Nobody else on earth deserves it but you, for being such an ultra sister.

"It's great to enjoy the benefits that money can bring.

"Stay well. I'll be back soon." In parentheses, "I've got to get my videotape back from my rotten brother-in-law, love, Cookie."

Q. And was there anything else contained with that letter?

A. Yes. The envelope, it was a sealed envelope inside. The envelope on the outside said "For Margie, my

sister." Then it says, "I hope you never have to open this envelope. If you do, enjoy it to the fullest."

And I opened the envelope. The small papers, it was a small paper in it, and the paper was written in very tiny letters but it stated, "Take everything and spend it on yourself and the baby, if anything happens to me."

It's dated August 30, 1983. "In my room with the [p. 265] papers in my clothes closet on the left is a small chest. In the bottom drawing are all my bankbooks.

"No. 2. Next to the closet is a strong box, green tin.

"No. 3. Check my postal office box and get checks from my investments.

"No. 4. I've paid Michael C. Fina, I think, $2,000 for silver flatware. Pay him the balance of $3,800 or so and enjoy it.

"No. 5. Take any and all the clothes you want and wear them in good health.

I love you and tried to be a good sister, Cookie."

Q. When did you finely [sic] find out that that airplane had crashed and that your sister wasn't coming back?

A. That night, I heard – the next morning is when I actually knew that she was on the airplane. I called Kennedy Airport and I spoke to someone from Korean Airline at the airport and asked if she was a passenger on that plane and they said, "You'd better start praying."

Q. And how did you do in the aftermath of all that?

A. Well –

MR. THOMPSON: Your Honor, I am going to object and just request a side bar for a moment, please.

THE COURT: All right.

* * *

[p. 267] (In open court)

Q. Ms. Zicherman, the question I had asked was how did you do in the aftermath of your sister's death?

A. Oh, I was in shock. I was very frightened that I would lose the baby. I had just had a miscarriage previous to that, and I kept going to the doctor. I wanted to make sure the baby was still alive because I thought the heartbeat, I was listening to the heartbeat all the time. Anytime it didn't move, I was very concerned that I would lose the baby.

I wanted to go to Seoul and I wanted to throw flowers in the water and travel there, but my doctor advised against it. He thought it was not a good idea to do so?.

I was very ambivalent about it because I was supposed to go with her on that flight. So I felt very ambivalent about whether I should have been with her.

Q. You did have the baby?

A. Yes. I had the baby, December 30.

Q. And during the period of time that you were pregnant and in the aftermath of that, did you have any [p. 268] distress because of the loss of your sister?

A. I could not sleep. I would have small amounts of sleep, but the newscaster kept coming on. I kept looking

for more. I got caught up in the news and the media events that were going on. I would run out and get papers all the time.

I was working three days a week at the time and I was doing a very important study for the Squibb Company with a very important heart medication, and I was doing treadmill tests on patients. And I was a northeast regional director of this particular program and I was very – I could not concentrate on my work any longer at that point. I didn't know what to do at that point, but I still went in to work. I thought the best thing to do was to keep working. I thought I would lose my mind if I didn't, so I just kept working.

Q. Did you have any physical problems arising out of this emotional stress?

A. I developed TMJ which is temporomandibular joint pain on my left side. It was kind of like a lockjaw, and it was quite painful, but I have a high tolerance for pain, and I didn't want to let it bother me, and I didn't complain about it, but I did have serious nightmares.

Q. Any other physical problems?

A. Nightmares, very serious nightmares. I would [p. 269] picture myself on the airplane with my sister. I would be seated next to her in the plane thing like that it was very explosions and just I was awake, but it was a nightmare. I tried to hide it, but I lost some of my friends. They couldn't dealt [sic] with it, deal with me.

Q. Did you seek any help or counseling for those problems?

A. No. I didn't, but in retrospect, I should have I thought I could handle it all myself because I'm a psychiatric nurse and I thought that I could – I could really handle anything. Maybe it's because of my upbringing, I felt I could fix myself and not seek help.

I was a helper my whole life. That is what I did. I helped people who were in heavy-duty trouble all the time, and I never asked for help. I don't think I was capable of asking for help at that time.

Q. And has any of the anguish that you have suffered have any connection with the fact that you've never gotten your sister's body, it has never been recovered?

A. Oh, that is a nightmare in itself. There were some instructions also that she wanted me to bury her in a religious fashion, and I was not able to carry that out. I still feel very strongly that it would help me resolve this living nightmare by finding the body and burying her and having my sister, to visit the grave. There is no grave. I [p. 270] don't think I'll every have a grave. And if I go past a graveyard, I see people in there. And I don't even go in. And I wish I could go in and visit my sister. She deserved that the very least, the grave.

MR. NEEDHAM: I have no further questions.

Excuse me, your Honor. The witness wants to take a very brief break.

THE WITNESS: I would like just two minutes,

THE COURT: Let's take a five-minute recess.

You may come down.

Jurors, you are excused for five minutes.

(Jury leaves the courtroom)

* * *

[p. 272] MARJORIE ZICHERMAN, resumed.

CROSS-EXAMINATION

BY MR. TOMPKINS:

Q. Good afternoon, Ms. Zicherman.

My name is John Tompkins, as you know. We met sometime ago when we had your deposition in my office near here in New York.

I just have a few questions I would like to ask you. You mentioned something during your testimony that your sister had called you from the airport the night the flight was leaving, is that correct?

A. Yes.

Q. And I believe you said that she mentioned something about a change in way stations that she had?

A. No. She said something about way points.

Q. Way points, all right. Did your sister have any aviation or navigational background at all?

A. No.

Q. Was she a pilot?

A. No.

Q. I think you also said during your testimony that your sister had moved to Boston in 1981, approximately?

A. That is correct.

Q. And she had an apartment there?

[p. 273] A. Well she moved gradually. She was at my house and had a room and moved things from Albany to my house and then to this apartment in Bay State road.

Q. Approximately what year did she move into that apartment, do you remember? '81? '82?

A. Could have been '81, late '81, early '82.

Q. At the time that she moved into this apartment in Boston?

A. Right.

Q. Was she still married to Dr. Kole?

A. She was married to Dr. Kole at the time.

Q. Was Dr. Kole live being her in Boston?

A. No.

Q. Where was Dr. Kole living?

A. I believe he was in Albany.

Q. Do you still have in front of you Plaintiff Exhibit No. 27 which is the last will and testament of your sister?

A. Yes.

Q. You have that before you?

A. Yes, I do.

Q. If you would look at the first paragraph, would you just read that first paragraph to the jury, please?

A. "I, Muriel A.M.S. Kole, residing in Loudonville, State of New York, which I hereby declare to be my domicile, [p. 274] do hereby make, publish and declare this to be my last will and testament."

Q. And if you would, can you just turn to the next page and if you look down to the paragraph below nine where it says "in witness whereof." Do you see that?

A. Are you saying the last page?

Q. The second page?

A. The second page does not reflect what you are saying.

MR. TOMPKINS: May I approach the witness, your Honor.

THE COURT: Yes.

MR. TOMPKINS: On this document it is on the third page. I know the difference is due to the page size, your Honor.

Q. In any event would you look at the paragraph which begins "in witness whereof"?

A. Yes, I am looking at it.

Q. Can you tell me the date that your sister signed this will by looking at that photograph?

A. It's not very clear. It looks like the 30th day of July, '82.

Q. And that is after you say that she had moved to Boston, is that correct?

A. This.

[p. 275] Q. The execution of this document?

A. This says after the, that is correct.

Q. I have another document which I would like to show you. It was pre-marked as Plaintiff Exhibit 2. It was produced by your attorneys during the pretrial discovery in this case.

MR. TOMPKINS: Your Honor, may I approach the witness?

THE COURT: Yes.

Q. I show you that document, Plaintiff Exhibit 2 and ask you if you have received that document before?

A. Yes, I have.

Q. If you would turn to the second page, look at the bottom. Is that your sister's signature?

A. Yes, it is.

Q. And the stationery that was used in the same Sugarbush Inn stationery as the prior letter to you?

A. Yes, it is.

Q. And if you look on the first page on the upper right-hand corner, there's a return address?

A. Yes.

Q. Would you read that return address?

A. 42 Loudonwood East, Albany, New York.

Q. What is the date of this letter which is right underneath the address in the upper right-hand corner?

[p. 276] A. August 27, 1983.

Q. And that was just three or four days before she left on her trip, is that right?

A. That is correct.

Q. She was using the Loudonwood East, Albany address?

A. She was using that address.

Q. That is the address where her husband, Dr. Kole, lived at that time?

A. I am not sure he was living there. I believe he was living there at the time.

Q. But that was the address that your sister was living at the time prior to the when she moved to Boston?

A. Prior to the time she moved to Boston.

Q. When she was living there, she was living with her husband at that address?

A. When?

Q. Prior to her move to Boston.

A. I couldn't tell you exactly if they were living together before she moved to Boston or up until what point they were living together.

Q. Plaintiff Exhibit 2, if you take that letter in your hand it's the same one you had in your hand. It's addressed to Tony?

A. Right.

[p. 277] Q. Who is Tony?

A. He was a distributor for the Cambridge Diet.

Q. Was your sister working for the Cambridge Diet Plan?

MR. NEEDHAM: I'm going to object. I think were pointed on the direct examination. This is not relevant

MR. TOMPKINS: This is relevant to the economist about what her life pattern was. It is relevant, unless he is going to withdraw the economist.

MR. NEEDHAM: I don't think it is relevant at all. There has been no testimony about Cambridge diet or anything the economist had to say.

THE COURT: Well, he is asking her now about her knowledge. This is some place she was employed? You are suggesting, Mr. Tompkins?

MR. TOMPKINS:I think that the witness will be able to explain, your Honor.

THE COURT: Do you know what it was?

THE WITNESS: Yes. It was a liquid diet. It was in a can and it was a powder and you mix it with water and you consumed it, and you would – essentially it was a nutrition plan, a diet-weight loss.

Q. And was she involved with that corporation back at the time this letter was written August 1983?

A. Yes.

[p. 278] Q. And do you know how long she had been involved with that corporation prior to the date of that letter?

A. Not very long.

Q. Can you estimate? Six months? A year?

A. It was less than a year.

Q. Where was Tony located?

A. You mean where he lived?

Q. Yes, where he lived – where he worked, rather.

A. It was on Highland Avenue in Salem, Massachusetts.

Q. Would you again pick up Plaintiff Exhibit 2 and just read that letter to the jury?

A. "I am writing to keep you posted on my sales activities. You have been very helpful and suggestive since the beginning, and I appreciate your efforts.

"I currently have five persons signed up and they are Marjorie Zicherman, my sister in Marblehead.

"Muriel Mahalek, 42 Watergate Loudonwood Avenue, Loudonville, New York.

"Susan Gifford" – there are some numbers. Do you want me to read the numbers?

Q. For the benefit of the jury, just read the names.

A. "Karen Barr, Robert Roses of Jamaica, Vermont." The other one was East Greenbush, New York. They were all different areas in New York.

[p. 279] "I telephoned you a few times but I don't think you ever got my messages. My group sales have been about $2,000 a month, and I have been personally ordering about $500 or more for the past three months. This month I posted my letter of eligibility. Before my sponsor, Lois Martus left town, she said I should do this as soon as my PR was $2,000 hand I had five people in my group. That is where I am at now. Now that we can advertise I plan to really get going in Albany before anybody else does.

"Thank you for your newsletter. I found it very helpful. Also, I appreciate your contacting Cambridge about the price difference for the Rich Vanilla Shake. As soon as you get the order numbers on the Chocolate Nutrition bars, please let me know.

"I'm on vacation enjoying some of my profits from Cambridge and making new sales. Sincerely, Muriel Kole.

Q. And do you remember back when I took your deposition in August of this year?

A. Yes.

Q. And at that time you were under oath, were you not?

A. Yes.

Q. And I asked you some questions concerning what type of employment your sister was involved in?

A. Yes.

[p. 280] Q. And do you specifically remember telling me –

MR. NEEDHAM: Objection. Do we have a page number.

MR. TOMPKINS: Page 40.

MR. NEEDHAM: Could the witness be allowed to see for the witness to see if it refreshes here [sic] recollections, her memory?

MR. TOMPKINS: I haven't asked the question.

THE COURT: Is there an original transcript somewhere.

MR. TOMPKINS: I will give the transcript, your Honor, if she needs –

THE COURT: I was asking for myself.

Q. At that time when I took your deposition in response to my question regarding what your sister was doing, did you tell me that she had her own psychotherapy practice?

MR. NEEDHAM: If he has a specific question and a specific page, I think he should show the specific page and see it if it refreshes her recollection.

MR. TOMPKINS: I am asking if she recalls saying it, and if she doesn't recall saying it, that is the proper procedure.

THE COURT: First of all, you can only use this deposition taken before trial to impeach the witness, so you [p. 281] first have to ask her a question here which you think is contrary to her testimony on this deposition. That is the procedure.

MR. TOMPKINS: I understand, your Honor.

Q. Back in 1983 did your sister have a psychotherapy practice?

A. She had an office in her apartment for psychotherapy. She was setting up the office.

Q. Did she also have a nutrition counseling program?

A. She had purchased the product and was selling some of this product.

Q. Was that the Cambridge Diet?

A. That is correct.

Q. That was based in Albany though, wasn't it?

A. No, it was based in – it was not based in Albany. It started in Boston.

Q. Well, I understand the company did, but your sister was based in Albany, wasn't she?

A. No. She wasn't based in Albany.

Q. Wasn't that where she was distributing the product?

A. She had all her friends and her whole career was back in Albany, so the people she first sold to would have to be the people that she knew and people that she knew was the Albany area. She had been there for years. The people [p. 282] you see on they list are friends from Albany.

Q. Was your sister earning a salary from any of these ventures?

A. I don't know what salary she earned.

Q. During this trial we've had some testimony from some co-workers an [sic] friends of your sisters who were all friends from the Albany area. Did she have any friends in Boston?

A. She had me. That was her main contact.

Q. Did she have anyone else?

A. Yes. She had a friend in Boston.

Q. What was that person's name?

A. Her landlord, Arthur Choo.

Q. Was there anything more to that relationship than just a landlord?

MR. NEEDHAM: Objection, your Honor.

THE COURT: Yes, sustained.

MR. TOMPKINS: May I hand the clerk what's been pre-marked as Defendant Exhibit G, plaintiff's answer to interrogatories.

[p. 283] BY MR. TOMPKINS:

Q. Do you see the document that has been placed in front of you, Mrs. Zicherman?

A. Yes, I do.

Q. It is Plaintiffs Answers to Interrogatories Propounded by Defendant Korean Air Lines?

A. Yes.

Q. This was some pretrial discovery between the attorneys in this case early on.

If you would turn, please, to page 13, you see your name typewritten?

A. Yes, I do.

Q. Is that your signature above that name?

A. Yes, it is.

Q. Just above your name, could you read what that says to the jury?

A. Signed under the pains and penalties of perjury.

Q. You understood when you signed this that you were under oath?

A. Yes.

Q. You have seen this document before?

A. Yes.

Q. If you would go back to the first page, question number 4 says, state the name, date and place of birth, residence, occupation and occupational residence of the [p. 284] decedent at the time of decedent's death?

A. Yes.

Q. The decedent being your sister, is that correct?

A. That's correct.

Q. If you would just read me what is written in the answer with respect to your sister's address.

MR. NEEDHAM: Your Honor, in fairness, can she read the entire answer?

THE COURT: You want her to read part of the answer?

MR. TOMPKINS: I just want her to read the answer concerning the address. He has an opportunity for redirect if he likes, your Honor, but I would like her to read what her address was on the date of death?

THE WITNESS: What should I read?

Q. The answer that is written there beginning with "Muriel," and going to just before the date of birth.

MR. NEEDHAM: I would simply object to a partial answer.

THE COURT: As he says, you can bring it on redirect or have it read now under the rules for completeness, if it is necessary for completeness of the answer.

MR. TOMPKINS: It is not necessary for the question I have asked.

[p. 285] MR. NEEDHAM: It is a compound question with a long answer and I think it should be the whole answer.

THE COURT: All right. Read the whole thing.

MR. TOMPKINS: I will rephrase the question then.

Q. Would you look at question number 4? It asks you a variety of things one of which is the residence of your sister; is that correct?

A. Yes.

Q. The answer there, if you would read that for the jury with respect to your sister's residence? Can you read that to the jury beginning with "Muriel"?

A. Muriel A.M.S. Kole, 42 Loudonwood East, Loudonville, New York 12211.

Q. If you would turn back to page 13, next to your signature it says, dated, but the date is blank.

A. That's right.

Q. But if you look at the bottom there is a certificate of service there. Perhaps counsel will stipulate as to the date that it was served; if not, I will ask you to read the date.

MR. NEEDHAM: It is my certificate of service and I will stipulate that it says November 15, 1984.

THE COURT: These are answers to interrogatories of plaintiff; is that what this is?

MR. TOMPKINS: Yes.

[p. 286] THE COURT: Is this in evidence?

MR. TOMPKINS: Yes. It has been marked as Defendant's Exhibit G. I don't believe there is any objection.

THE COURT: We should receive these in evidence so they can be marked in evidence.

(Defendant's Exhibit G for identification was received in evidence)

MR. TOMPKINS: I don't have any further questions.

THE COURT: You have no further questions?

MR. NEEDHAM: I have just a few.

REDIRECT EXAMINATION

BY MR. NEEDHAM:

Q. Mrs. Zicherman, this Plaintiffs' Exhibit 2 about the Cambridge Diet that my brother asked you about, in this letter it shows that your sister has five people lined up for this diet program, does it not?

A. Yes, it does.

Q. One is you?

A. Yes.

Q. One is your mother?

A. Yes.

Q. And one is a friend named Sue Gifford?

A. That's right.

[p. 287] Q. One is a friend name [sic] Karen Barr?

A. Yes.

Q. And one is a friend named Robert Moses?

A. Yes.

Q. She had just signed you all up, hadn't she?

A. Yes.

Q. In your letter that you got from the airport dated August 30, 1983, she talked about how some diet program had gone bust.

Is this the diet program that she was talking about?

A. It really didn't go bust but she thought it did at the time.

Q. At the time of her death, was she living on Bay State Road in Boston?

A. Yes, she was.

MR. NEEDHAM: No further questions.

THE COURT: All right. Thank you. You can come down.

There is nothing further?

MR. TOMPKINS: No, your Honor.

THE COURT: The jury is excused until 10:00 tomorrow morning.

Please be on time, ladies and gentlemen.

(The jury leaves the courtroom)

* * *

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF NEW YORK

TESTIMONY OF MURIEL
MAHALEK

[p. 295] MR. NEEDHAM: The Plaintiffs call Mrs. Mahalek to the stand.

MURIEL MAHALEK, called as a witness by the plaintiffs, having been duly sworn, testified as follows:

DIRECT EXAMINATION:

BY MR. NEEDHAM:

Q. Mrs. Mahalek, was Muriel Kole your daughter?

A. Yes, she was my daughter.

Q. When was she born?

A. I beg your pardon.

Q. When was she born?

A. She was born November 24, 1942.

[p. 296] Q. She had a younger sister named Marjorie?

A. Yes.

Q. When was Marjorie born?

A. January 30, 1948.

Q. Where did you and your daughters grow up?

A. In Brooklyn, New York.

Q. While they were growing up, had you been employed or was your husband employed?

A. Not the first few years. My husband was employed, yes, but I didn't go to work until about 1955.

Q. What did you husband do?

A. My husband was a transit authority motorman.

Q. What did you do in 1955 when you went to work?

A. Well, I first started as a clerk, office clerk.

Q. Then what did you do?

A. I worked there about three years and then I went to Wall Street. I worked on Wall Street in a brokerage firm seven years and then I worked two years at St. Vincent's Hospital and then I went to work in 1968 for the transit authority as a subway token clerk.

Q. What is your educational background, Mrs. Mahalek?

A. I went to high school except for the last month. Then I got married before I graduated.

Q. Could you tell us or tell the jury a little bit [p. 297] about Muriel Kole, your daughter, in terms of her educational experience, what schools she went to and how she proceeded through with her education?

A. Oh. My daughter, Muriel, went to Public School 242, the neighborhood school. She then went to Prospect Heights High School, finished her high school career. That was in 1960. She then won a scholarship to Brooklyn Hospital, school of nursing. That was from 1960 to 1963. She graduated from the school of nursing there, in 1963, around June, and then she started to be employed at that

hospital where she was in training at Brooklyn Hospital as a nurse.

Q. At the time she was going through that, you had a younger daughter, Marjorie, didn't you?

A. Yes.

Q. Growing up, how would you characterize the relationship between Marjorie and Muriel, your two daughters?

A. The way I treated them, you said?

Q. What was their relationship like?

A. The two sisters?

Q. Yes.

A. Well, the two sisters, Muriel was the older of the two so she took over, she felt like she was the mother of her younger sister. They were like – she always took [p. 298] care of her. They were very close together, friendly and close.

Q. Could you just go through in a little detail what you daughter's career was as she continued to go through the different schools she attended; after she became a nurse, what came next?

A. Muriel?

Q. Yes.

A. Oh, after Muriel became a nurse, she then got married. She got married in 1964. When she got married she lived in Queens and worked at another hospital there in Queens.

She stayed in New York about two years and then she moved up to Albany. Then she continued her education also while in Albany. She went to another school. Later she went to another school and later on she kept continuing her school all through these years and she finally went to Russell Sage College for her degrees.

Q. Did you follow her career from your home in Brooklyn?

A. Yes.

Q. During this period of time while – up until 1980 or so, would you talk to your daughter on the telephone from time to time?

A. Naturally, yes, I did, yes, yes.

[p. 299] Q. During that time she was in Albany, was she not?

A. Yes, that's correct.

Q. Mrs. Mahalek, when did you first learn that your daughter was on KAL Flight 7?

A. I first learned that she was on that flight when my son had called me about the flight.

Q. What did he tell you?

A. Well, that was September 1, and I was in my home here in Brooklyn and my son – oh, I had the television on and there was news on about this plane. But I didn't know she had taken that flight exactly. But then the phone rang and my son had called me and he had told me that he had reason to believe that my daughter was on that plane that was shot down.

Q. What did you do then?

A. Well, I didn't want to believe that. I became distraught. I was home alone. I became distraught. I wasn't aware that she had been on the plane, and I called to my daughter's home there at Loudonville to check out, to see what happened, if this were true. I didn't want to believe it. I didn't want to accept that.

Q. At that time did you know where your daughter was living, your daughter, Muriel?

A. No, but I called there where, the home where she and Michael had been living.

[p. 300] Q. What did you do then? When you called the home in Loudonville, did you speak with anybody?

A. When I called the home in Loudonville? I learned that my daughter definitely was on that plane, and then I had packed my bag because my son told me that I leave my home and come up there by him because I was alone at home in Brooklyn.

That was Rochester. My son lived in Rochester and I was home in Brooklyn on that day and he suggested, he made flight arrangements that I come immediately to Rochester to be with part of my family.

Q. After you got to Rochester, did you make any plans for any service of Muriel?

A. Not at that time, no.

Q. When did you make those plans?

A. I didn't make those plans.

Q. Did you have a memorial service?

A. There was a memorial service – yes, there was a memorial service for Muriel in Loudonville September 28, 1983, St. Pius The Tenth church.

Q. Did you attend that?

A. Yes.

Q. Was Marjorie there?

A. Yes.

Q. Could you tell me, Mrs. Mahalek, in the aftermath [p. 301] of Muriel's death, did you have any problems, any personal problems?

MR. TOMPKINS: Objection, your Honor. May I request a sidebar at this time?

THE COURT: Is this something I previously ruled on?

MR. TOMPKINS: Yes. I would just like a standing objection.

THE COURT: Well, let the record reflect you have a standing objection.

MR. TOMPKINS: Thank you, your Honor.

THE COURT: Let's proceed.

Q. Mrs. Mahalek, in the aftermath of your daughter's death, could you tell us, just describe your experience to the jury?

A. In the aftermath of my daughter's death? First of all, I didn't want to accept it. The news that I had heard

that my daughter had been on that plane, I couldn't believe it, I didn't want to accept it, and I had checked it out, as I said, and it was true, and I tried to put myself together.

I stayed at my son about a week constantly listening to the TV and everything hoping that the news that I heard would be retracted, that my daughter was not – she wasn't on that plane.

[p. 302] I was all upset, so then I tried to check out everything. I wrote – I wrote a letter to President Reagan, I wrote to Moynihan and I wrote to D'Amato that the news I had heard and that please try to verify it for me that my daughter was on that plane, and that there was no bodies recovered.

I couldn't accept that that was the end. I kept writing letters and persuing [sic] this, please help me find out something.

In the first weeks that it occurred I wrote everyone and I received responses from the State Department and D'Amato and President Reagan at the time expressing their sympathy, but they didn't explain very much about it.

Q. In the period of time following that, did you have any other problems; by "problems," I mean coping with the loss of your daughter?

A. Yes, I did. I was very upset. I was very upset and I – I was heartbroken naturally because that was a part of me, and I refused to accept it, that there was no one, that they didn't find anyone, that there was no body to be recovered. I couldn't cope with that, with the issue. I

couldn't cope with the issue that she had been taken, she was gone, and it wasn't an illness.

If it was an illness, maybe, but she was just taken suddenly. It was an untimely and tragic death that [p. 303] she went through. I couldn't accept that. It wasn't necessary. I felt it didn't have to be.

Q. Does the fact that this death was caused by the willful misconduct of Korean Air Lines affect this anguish that you are undergoing?

MR. TOMPKINS: Objection, your Honor.

THE COURT: What is the objection?

MR. TOMPKINS: Willful misconduct. There has been a prior ruling in this case, he brought it up in this case, and I request an immediate mistrial.

THE COURT: The jurors should be advised that the jury in Washington found willful misconduct in order for the airline to be liable in these circumstances.

Let's proceed.

Q. Has that exacerbated in any way this mental anguish you described, the fact that it was caused by the willful misconduct?

A. Well, yes, because, you see, I worked in the subways and I took some time off. It was difficult for me to have a happy face and take care of people, say good morning and everything and inside I was broken hearted.

I was crying all the time. I couldn't work for a little while. I found it very hard that – it wasn't a very nice state and I had to smile and be polite to my passengers.

Inside I was crying and I – it was difficult [p. 304] to work.

I did have to go back, but –

Q. Does the fact that the accident or does the fact that the accident was caused by the willful misconduct of Korean Air Lines make it more difficult for you to accept?

MR. TOMPKINS: Objection.

THE WITNESS: As I said, to me I felt it was a needless thing and I never would expect that I would see a time that a daughter or a child of mine would precede me in death. It wasn't a likely thing.

It was more devastating to the fact that my daughter went, was taken away and preceded me in death which it was devastating to accept.

Q. Mrs. Mahalek, when is your birthday?

A. My birthday?

Q. Not the year, just the day.

A. What is that?

Q. What day is your birthday?

A. April 29.

Q. Would you and Muriel normally get together on your birthday?

A. Yes.

Q. What would you usually do?

A. Well, she would take me out to dinner if it were – if the availability of the time. She would take me out [p. 305] to dinner on my birthday.

Q. On your birthday in 1983 did she take you out for dinner?

A. Yes. April 29, 1983, that was the last time I saw my daughter. She took me to dinner.

Q. Mrs. Mahalek, when you went to dinner with your daughter in 1983, that was your birthday?

A. Yes.

Q. April 29?

A. Yes.

Q. And as your birthday was approaching in 1987, did you have any particular problems?

A. In 1987? Well, my birthday was approaching, yes, I –

Q. Could you tell the jury what happened?

A. In 1987, it was approaching the time again where I would probably plan to go to dinner and I was reading, going through some of my things and reading – one of the books that was written about this affair which I read almost every book that was written and every piece of literature I could pursue on this to find out exactly what had happened in this case, and I was reading the book, and I was very depressed that time, and because of that and things I attempted to take my life. I attempted to commit suicide.

Q. What happened, what did you do, Mrs. Mahalek? [p. 306] What happened?

A. What happened?

Q. Specifically, what did you do?

A. Oh, I took a knife and I cut my throat here and I cut myself over here.

Q. Were you admitted to hospital?

A. Yes.

Q. Which hospital was that?

A. Brookdale Hospital, Brooklyn, New York.

Q. Were you admitted to that hospital?

A. Yes.

Q. Did you have surgery for the injuries you sustained?

A. I had surgery the evening I was brought in, yes.

Q. Then were you an in-patient for a while?

A. Yes, I was an in-patient there, yes.

Q. You had some ongoing therapy and counseling since then, haven't you?

A. Yes.

Q. What kind of ongoing counseling or therapy did you have?

A. What kind of therapy? While I was there, I had a medication, an antidepressant, one type of medication, an

antidepressant, and then I was released and then I was going to bereavement counseling to help adjust people for [p. 307] bereavement.

I went to counseling, that was talking, and when I went to counseling they start to cut down on the medication.

When I left the hospital they had given me the pill, antidepressant, and at counseling the medication was gradually brought down to take you off it and then you had an individual counseling, once or twice a week, I went, and then I no longer needed the medication, was taken off, and then they had group therapy where you meet other people who have various types of problems and they talk. You can talk group therapy.

Q. For how long did you go to group therapy?

A. I went once a week, that was in 1987, 1987, yes, and I go, then it was – you are required to go, and after the medication was stopped, I went on a voluntary basis.

I still go once or twice, even, steadily, since 1987 for counseling, talking with groups, voluntarily now because I no longer have any medication of anything but I found it was good.

Q. How are you doing now?

A. I am – I am fine now. I have no medication whatsoever of any type.

Q. Mrs. Mahalek, do you attend any church in Brooklyn where you live?

[p. 308] A. I go every Saturday to my local parish, to mass, 5:00, every Saturday. I am a steady parishoner [sic], yes.

Q. Is there another church near your house?

A. Yes. We have another church in Brooklyn there, St. Jude Parish, where there is a – there is a shrine room, it is a shrine to St. Jude, and they have a room there with memorial candles for deceased members of your family. So we had no body, no remains from Muriel, no cemetery, no place to visit.

So at this church I purchase – they have a memorial candle that is lit, it is electric and it is lit for one year straight, it never goes out, and I purchased that. I purchased that is 1990 and every year I continue to purchase that candle which the light has not gone out.

September 1 is the Memorial Day of the flight disaster and every September 1 I renew the candle and I spoke to my parish priest there and I told him that since I had nobody, I have no cemetery to visit, this is my place, I go there to that.

There is a plaque on it that says, in memory of Muriel Mahalek Kole, requested by loving mother.

That is a memorial candle and it is still lit. I go there as a substitute for a grave place to visit.

MR. NEEDHAM: No further questions.

CROSS-EXAMINATION

[p. 309] BY MR. TOMPKINS:

Q. Good morning, Mrs. Mahalek.

A. Good morning, sir.

Q. As you know, my name is George Tompkins. We met a couple months ago when I took your deposition in my office.

A. Yes, yes.

Q. When did your daughter, Muriel, move out of the house?

A. My house?

Q. Yes.

A. Excuse me. One moment please.

Q. Sure.

A. My daughter moved out of the house when she won the scholarship to Brooklyn Hospital to become a nurse. She had to reside in the hospital there and the scholarship was classes and floor practice. That was the term of the scholarship. She had to live in Brooklyn Hospital. That was 1960.

Q. 1960, that is when she moved out of the house?

A. Yes. She moved into the hospital and started her career of studying and taking care of people at the same time. That was her schooling to prepare for her nurse's certificate.

Q. At any time after she moved out initially did she [p. 310] ever move back into the house?

A. No, no, because when she graduated, as I said, from that, she got a job right there and lived there also, in Brooklyn Hospital, and then she married.

Of course, from the time that she won the scholarship and started the schooling she never came back to the house.

Q. When did you retire from the transit authority?

A. I retired the day I was 65.

Q. Which is what year?

A. 1985, after 17 years in the subway.

Q. During the time that you worked for the transit authority, were you financially dependent at all on Muriel Kole?

A. I was never financially dependent on any of my children, never. I worked steadily from about 1955 to the 1985, never a day's unemployment. I worked sometimes – in the beginning I had worked two jobs before I had the transit and then with the transit I would work as much overtime as I could. I never relied on my children.

Q. I want to ask you some questions about the suicide attempt that you discussed with Mr. Needham on his direct exam.

A. Yes.

Q. Isn't it true that when you went to the hospital [p. 311] the day that you stabbed yourself that you told them that you thought you had cancer and that was the reason that you stabbed yourself?

A. One of the reasons. I said I thought I had cancer and I was depressed also about – it was a culmination of traumatic things that occurred through my lifetime which the death of Muriel was an added traumatic thing to me.

Q. What other things had occurred through your lifetime that had contributed to this feeling that you wanted to commit suicide?

A. What other things was, well, while I was working, while I had been working I had been held up on my job, robbed at the booth, subway, I had a home robbery in my house while I was in the bedroom of my home while I was employed at the transit. Someone had come in and I was terrified and I woke up and chased them and after that I couldn't sleep so – I couldn't sleep because of the robbery and I took the midnight shift because – instead of sitting up all night, I worked the midnight shift in the subways, 12:00 to 8:00, and I would sleep during the day. At night I was afraid. After someone first entered my home, that was a traumatic thing.

I had a car stolen three times and wrecked on me. My whole life – my mother had died when I was two and I had [p. 312] foster parents.

My life with my husband wasn't – I was married in 1938 and I didn't have a very easy time with my husband. My husband was 12 years older than I.

I had three children, and there were traumatic things. Traumatic things? Yes. I had a son. When he was 5 he was stricken with polio which was a year in the hospital at the time that Muriel was born, and there were traumatic things like that, events like that, and my son had – many things through the marriage.

My son had been born with a club foot which required also my constant attention all the time and traumatic things to my mind that these things didn't happen but they all did happen to me.

Q. I think you also testified during your direct exam that the last time you saw your daughter Muriel was for your birthday?

A. Yes, it was.

Q. That was here in New York?

A. Yes, it was in New York, yes.

Q. How often would you see your daughter on a yearly basis, say, for the last five years, from 1978 to 1983?

A. '78 to '83, oh, those were my working years. Not too often.

My daughter had, as you heard, quite a busy [p. 313] schedule with – between her schooling and her work layout and things and I, my shifts were different. It was difficult to get together because of my job.

My job was with the city transit. I did not get holidays off. It goes by seniority. I did not get choice of hours, but I had – I never worked mornings.

I worked 4:00 to 12:00 and midnight to 8:00 which getting together with Muriel was difficult. As I said, holidays were on a priority basis according to your seniority. I would work the holidays. I couldn't get the holidays off.

If I could work 16 hours, two shifts, I worked because I had to support myself. My husband was deceased in 1979 so I worked all the overtime I possibly could so that I could retire before the 20 years, and I worked all the time. That was what I did.

I was alone in Brooklyn and I worked. I enjoyed the job except for when – when it was good, when I wasn't held up. I liked the work. I liked working with the people. I liked the job but –

MR. TOMPKINS: Thank you. I have no further questions for you.

MR. NEEDHAM: I have no further questions of this witness.

THE COURT: Thank you.

* * *

Plaintiffs' Exhibit 17

August 23, 1983

To my dearest Marjorie,

You are the most wonderful sister anyone could ever hope to have. Lucky me! " 'Unconditional love' – Margie."

Love Always,

Cookie

PLAINTIFFS' EXHIBIT 27

SUGARBUSH INN

[1090]

August 30, 1983

Dear Margie,

Take good care of yourself. Don't be too upset about The Cambridge – it was too good to be true. I had bad vibes about The "Feathers" being involved in the marketing since the beginning. Eh! We've only just begun. I called Sue Gifford Fligleman today (Tues) and she said her lawyer told her about the company having serious problems Monday noon. It seems that her N.Y.C. 5th Ave. lawyer had some contact with The Cambridge lawyer last week – all the crooks hang out together obviously. She called him Monday to ask his advice about investing $50 in a booth at the BPW Businesswomen's Fair I told her about, and he advised her not to! Talk about inside information and bailing out early.

I'm in the airport now and have already gotten my seat. I'm really excited about this trip – very low calorie diet paper and all. What a bust. It will be great fun. People are off to all parts of the world – too bad nobody has any money. Horay [sic] – Its For Me!

I've enclosed a few coupons for milk to fatten you up. HA, HA. I'll be sure to look for some special hair combs and ornaments. Instead of the Phillapines; the plane is stopping in Anchorage, Alaska. Quite a difference in latitude.

I've enclosed a small envelope to be kept by you and only opened in case I don't make it back – for whatever reason: nothing morbid.

Nobody else on earth deserves it but you, for being such an ultra sister.

Its great to enjoy the benefits that money can bring.

Stay well, I'll be back soon (I've got to get my video-tape from my rotten brother-in-law.)

Love,

Cookie

I hope you never have to open this envelope – if you do – enjoy it to the fullest.

Take everything and spend it on yourself and the baby if anything happens to me.

August 30, 1983

1. In my room with the papers is my clothes closet on the illegible is a small chest – in bottom drawer are all of my bank books.

2. Next to the chest is a illegible.

3. Check my Post Office Box where I get checks from investments.

4. I've paid illegible I think $2,000 for silver flatware. Pay him the balance of $3,800 or so and enjoy it.

5. Take any & all the clothes you want & wear them in good health. I love you & tried to be a good sister.

Cookie.

For Margie – My Sister

PLAINTIFFS' EXHIBIT 28

LAST WILL AND TESTAMENT

of

MURIEL A.M.S. KOLE

I, MURIEL A.M.S. KOLE residing in Loudonville, State of New York, which I hereby declare to be my domicile, do hereby make, publish and declare this to be my Last Will and Testament.

FIRST: I revoke all Wills and Codicils at any time heretofore made by me.

SECOND: I direct that all my just debts and funeral expenses be paid out of my estate as soon after my death as may be practicable.

THIRD: All the rest, residue and remainder of the property both real, personal and mixed and wheresoever situate which I may own or be entitled to at the time of my death, I give, devise and bequeath as follows: 1) I give, devise, and bequeath one-third (1/3) of my estate to my spouse, MICHAEL A. KOLE, if he shall survive me. If he shall not survive me, I give, devise, and bequeath the above one-third (1/3) share to my issue, if any, per stirpes, and if no issue survive me, then to my sister, MARJORIE D. ZICHERMAN or to her issue, per stirpes; 2) I give, devise, and bequeath the remaining two-thirds (2/3) of my estate to my issue, if any, per stirpes, and if no issue survive me, then to my sister, MARJORIE D. ZICHERMAN, or to her issue, per stripes. If my said sister or issue do not survive me, then to those persons to whom and in those proportions in which the same would have

been distributable if I had then died the owner thereof, intestate, and resident of the State of New York.

FOURTH: I hereby appoint my sister, MARJORIE D. ZICHERMAN to be the Executor of this my Last Will and Testament.

I direct that none of my Executors shall be required to give any bond or other security for the faithful performance of their respective duties in any jurisdiction whatsoever, or if any bond is required, no surety shall be required thereon. No fiduciary at any time acting hereunder shall be required to file periodic accountings in the Court in which this Will shall be admitted to probate unless such fiduciary shall elect to do so. To the extent that any of my Executors shall exercise discretion hereunder and make payment and/or application of assets as herein provided they shall be relieved of any and all responsibility and liability with respect to the same.

FIFTH: I hereby appoint my above-mentioned spouse, as the Guardian of the person and property of my children during their respective minorities. If my spouse does not survive me, or fails to qualify, or having qualified, dies, resigns, or becomes incapacitated before all of my children attain the age of eighteen (18) years, I hereby appoint my sister, MARJORIE D. ZICHERMAN, as Guardian of the person and property of my said children during their respective minorities.

I direct that no Guardian shall be required to furnish any bond or other security in any jurisdiction for the faithful performance of his duties.

SIXTH: My Executor shall have discretion to make payment or distribution of any principal and/or income vesting in and payable to any minor in any one or more of the following ways:

(a) paying the same to the parent, guardian or other person having the care and control of such minor and the receipt of such payee shall be full acquiescence to my Executor,

(b) paying the same to any relative of the minor as custodian for the minor under any applicable Gifts to Minors Act, or

(c) deferring payment or distribution of any part or all thereof until the minor comes of age, meanwhile applying to such minor's use so much principal and income therefrom, and at such time or times as my Executor may deem advisable. Any income not expended by my Executor shall be added to principal and my Executor shall pay over and disburse the principal to the minor upon such minor attaining the age of eighteen (18) years or to the estate of such minor if the minor dies under the age of eighteen (18) years.

SEVENTH: My Executor shall have all the powers and authority which are now conferred upon fiduciaries (expressly including, but not limited to, those powers enumerated in the Fiduciaries Powers Act, Section 11-1.1 of the New York Estates Powers and Trusts Law) or which may hereafter be conferred by law upon Executors. In addition to the foregoing powers and authority, I fully authorize and empower my Executor to retain any and all property, and also, to invest any and all property, real or personal, which at any time may constitute part of my

estate, in any stocks, bonds, common trust funds, securities of investment companies or other securities regardless of any rule regarding diversity of trust investments.

EIGHTH: I direct that all inheritance, estate, transfer, succession and death taxes or duties (including any interest thereon) imposed by any jurisdiction whatsoever by reason of my death upon or in relation to any property includable in my estate for the purposes of any such taxes or duties, whether such property passes under the provisions of this Will, or outside the provisions of this Will, be paid out of my general estate without proration or apportionment.

NINTH: Wherever the terms "Executor" or "Executors" are employed herein, the same shall be deemed to include the terms "Executrix" or "Executrices" or their alternates or successors, as the case may be.

IN WITNESS WHEREOF, I hereby sign, seal, publish and declare this to be my Last Will and Testament and initial each page, in the presence of the persons witnessing it at my request this 30th day of July, in the year One Thousand Nine Hundred and Eighty-two.

/s/ Muriel A.M.S. KoleL.S.

The foregoing was on said date subscribed, sealed, published and declared by the Testatrix as her Last Will and Testament, in our presence and we at her request, and in her presence and in the presence of each other, subscribed our names as witnesses (the final sentence of the Will beginning with the words, "IN WITNESS

WHEREOF" having been read aloud in her and our presence), all of us, including the Testatrix being present throughout the execution and attestation of this Will.

Lori E. Lee residing at 520 Madison Ave, Albany N.Y. 12208

Jennifer Rai Schmaly residing at 381 Madison Ave. Albany, N.Y. Illegible

Richard A. Artessa residing at Madison Ave. Albany, N.Y.Illegible

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AFFIDAVIT OF SUBSCRIBING WITNESS

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

Lori E. Lee, Jennifer Rai Schmaly, and Richard A. Artessa, each of the undersigned, individually and severally, being duly sworn, depose and say:

The within Will was subscribed in our presence and sight at the end thereof by Muriel A.M.S. Kole, the within named Testator(rix); on the 30th day of July, 1982, at 42 State St., Albany New York.

Said Testator(rix) at the time of making such subscription declared the instrument to be his (her) Last Will and Testament.

Each of the undersigned thereupon signed his name as a witness at the end of said Will, at the request of said Testator(rix) and in his(her) presence and in the presence and sight of each other.

Said Testator(rix) was, at the time of so executing the said Will, over the age of eighteen (18) years and, in the respective opinions of the undersigned, of sound mind, memory and understanding and not under any restraint or in any respect incompetent to make a Will.

Said Testator(rix), in the respective opinions of the undersigned, could read, write and converse in the English language and was suffering from no defect of sight, hearing or speech, or from any other physical or mental impairment which would affect his(her) capacity to make a valid Will. This Will was executed as a single, original instrument and was not executed in counterparts.

Each of the undersigned was acquainted with said Testator(rix) at such time and makes this affidavit at his(her) request.

/s/ Lori E. Lee
/s/ Jennifer Rai Schmaly
/s/ Richard A. Artessa

Severally subscribed and sworn to before me this 30th day of July, 1982.

/s/ Illegible
Notary Public

[Seal]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 542, 667 August Term, 1993
Argued: Decided:
October 28, 1993 November 3, 1994

Docket Nos. 93-7490; 93-7546

MARJORIE ZICHERMAN, individually and as executrix under the estates of Muriel A.M.S. Kole; MURIEL MAHALEK, mother and next of kin of Muriel A.M.S. Kole,

Plaintiffs-Appellees/
Cross-Appellants,

MICHAEL KOLE,

Plaintiff,

-against-

KOREAN AIR LINES, CO., LTD.,

Defendant-Appellant/
Cross-Appellee.

Before: LUMBARD, VAN GRAAFEILAND, and WINTER, *Circuit Judges*.

Appeal from a judgment entered in the District Court for the Southern District of New York (Motley, *J.*) on April 12, 1993, following a jury verdict in a wrongful death action. Plaintiffs cross-appeal the trial court's calculation of prejudgment interest.

Affirmed in part, vacated in part, and remanded in part.

W. PAUL NEEDHAM, Boston, Massachusetts, (Needham & Warren, Boston, Massachusetts, Kevin M. Hensley; Christopher Lovell, New York, New York, of counsel), for Plaintiffs-Appellees/Cross-Appellants.

ANDREW J. HARAKAS, New York, New York (Condon & Forsyth, New York, New York, George N. Tompkins, Jr., Jeanine C. Veracoechea, George N. Tompkins, III, Peter F. Tamigi, of counsel), for Defendant-Appellant/Cross-Appellee.

LUMBARD, *Circuit Judge*:

These appeals were argued on October 28, 1993. We delayed our determination pending a decision in *In re Air Disaster at Lockerbie, Scotland on December 21, 1988*, slip op. 7795 (2d Cir. Sept. 12, 1994) (*"Lockerbie II"*), which already had been heard by a different panel on May 19, 1993.

Korean Air Lines Co., Ltd. ("KAL") appeals from a judgment of the Southern District of New York (Motley, *J.*) entered on April 12, 1993, following a jury verdict which awarded damages of $251,000 to Marjorie Zicherman and $124,000 to Muriel Mahalek, the surviving sister and mother, respectively, of KAL passenger Muriel Kole. After trial, the district court granted prejudgment interest on the judgment, but discounted the jury award at a rate of 2% per annum to the date of the accident in calculating prejudgment interest. *Zicherman v. Korean Air Lines Co., Ltd.*, 814 F. Supp. 605, 612 (S.D.N.Y. 1993).

KAL argues that: (1) federal maritime law precludes plaintiffs' recovery for loss of society; (2) federal maritime law precludes plaintiffs' recovery for mental injury

or grief; (3) the evidence was insufficient to sustain an award to Zicherman as executrix of the estate for Kole's conscious pain and suffering; and (4) the evidence was insufficient to sustain an award to Zicherman for loss of support and loss of inheritance. Plaintiffs cross-appeal the court's discounting of prejudgment interest.

The awards for pain and suffering, loss of support, and loss of inheritance, and the district court's calculation of prejudgment interest, are affirmed. The awards for mental injury are vacated. The awards for loss of society are vacated in part and remanded in part.

I.

On September 1, 1983, KAL flight KE007, en route from New York to Seoul, South Korea, strayed into Soviet airspace over the Sea of Japan and was shot down. All 269 persons on board died, including Muriel Kole. Zicherman and Mahalek, surviving relatives of Kole, brought suit in the Southern District of New York to recover damages.

The Judicial Panel on Multidistrict Litigation transferred all federal court actions arising out of the disaster to the District of Columbia for trial on the common issue of liability. *In re Korean Air Lines Disaster of Sept. 1, 1983*, 575 F. Supp. 342 (J.P.M.D.L. 1983). After a jury determined that the crash was proximately caused by KAL's "willful misconduct," *see In re Korean Air Lines Disaster of September 1, 1983*, 932 F.2d 1475 (D.C. Cir.), *cert. denied*, 112 S. Ct. 616 (1991), the Multidistrict Panel remanded the individual cases to their courts of origin to determine damages.

Prior to trial of Zicherman and Mahalek's damages, KAL moved for a determination that the Death on the High Seas Act ("DOHSA"), 46 U.S.C. §§ 761-768 (1988), limited recovery to pecuniary losses. Judge Motley denied the motion, holding that plaintiffs as close surviving relatives could recover for loss of love and affection ("loss of society") and for mental injury and grief, and that Zicherman as executrix of Kole's estate could recover for Kole's pre-impact conscious pain and suffering. *In re Korean Air Lines Disaster of Sept. 1, 1983*, 807 F. Supp. 1073, 1080-88 (S.D.N.Y. 1992).

At trial, two expert witnesses testified as to Kole's conscious pain and suffering. James Foody, an aeronautical engineer, testified that the Soviet aircraft fired two missiles, which struck the KAL plane at an altitude of 35,000 feet; that the missiles probably caused a five foot hole in the rear fuselage; and that the plane remained airborne for twelve minutes thereafter. Robert Elzy, an aviation physiologist, testified that such a hole would cause rapid decompression of the plane; that passengers would experience intense pain in their ears, sinuses, lungs, stomach, and intestines due to decompression; and that passengers had sufficient time to don oxygen masks which would allow them to remain conscious during the plane's descent.

Zicherman testified that she had received financial assistance from Kole. Kole had paid Zicherman's wedding expenses and had volunteered to finance Zicherman's purchase of a new home. Prior to Kole's flight, Zicherman – who was then pregnant – received an envelope to be opened in the event of Kole's death; the envelope contained a letter describing Kole's assets and

stating, "[t]ake everything and spend it on yourself and the baby, if anything happens to me." In contrast, Mahalek stated on cross-examination that she was never financially dependent on Kole.

The jury returned a total verdict of $375,000 as follows:

Mahalek	
1. Mental injury	$96,000
2. Loss of society	$28,000
Zicherman (personal capacity)	
3. Mental injury	$65,000
4. Loss of society	$70,000
5. Loss of support	$5,000
6. Loss of inheritance	$11,000
Zicherman (as executrix of Kole's estate)	
7. Kole's pain and suffering	$100,000

The district court ruled that plaintiffs were entitled to prejudgment interest. The court discounted the judgment back to the date of the accident at a rate of 2% per annum and awarded prejudgment interest on that amount.

II.

Where injuries occur on an international flight, the Warsaw Convention provides an exclusive cause of action. *See* Convention for the Unification of Certain Rules Relating to International Transportation by Air, *done* at Warsaw, Oct. 12, 1929, 49 Stat. 3000, T.S. No. 876, 137 L.N.T.S. 11, *reprinted at* 49 U.S.C. § 1502 note (1988); *In re Disaster at Lockerbie, Scotland on December 21, 1988*, 928

F.2d 1267, 1274-80 (2d Cir.) ("*Lockerbie I*"), *cert. denied*, 112 S. Ct. 331 (1991). However, because the Warsaw Convention is silent on the question of damages, we look to federal law to decide such issues. *Lockerbie I*, 928 F.2d at 1278-79.

KAL argues that because flight KE007 was shot down over non-territorial waters, the applicable law is DOHSA, which expressly iimits recovery to pecuniary loss. 46 U.S.C. § 762; *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 622-26 (1978). We disagree.

In *Lockerbie I*, we adopted the federal common law to govern causes of action under the Warsaw Convention. 928 F.2d at 1278. In *Lockerbie II*, we held that damages under the Warsaw Convention should be determined "by an examination of maritime law, which is probably the oldest body of federal common law." slip op. at 7841. While two maritime statutes – DOHSA and the Jones Act, 46 U.S.C. app. § 688 (1988) – preclude recovery for non-pecuniary loss, general maritime cases not brought under such statutory restrictions allow recovery. *Id.*, slip op. at 7841-42; *Sealand Services, Inc. v. Gaudet*, 414 U.S. 573, 585-88 (1974) (recognizing loss of society damages as remedy available under general maritime law). Looking at the language and underlying policies of the Warsaw Convention, we concluded that compensatory, non-pecuniary damages awards are appropriate under the Convention. *Lockerbie II*, slip op. at 7842-43. Accordingly, we held that under the general maritime principles of *Gaudet* and its progeny, the Warsaw Convention permits recovery for loss of society. *Id.*, slip op. at 7843.

KAL seeks to distinguish the *Lockerbie* decisions as involving an accident over dry land, whereas the present action involves an accident over water. However, as we have stressed, a uniform law should govern Warsaw Convention cases. *Lockerbie I*, 928 F.2d at 1278-79. Adopting one rule for Convention cases involving accidents over land and another for accidents over water would defeat such uniformity.

Our holding is consistent with the Congressional scheme under DOHSA, which was enacted in 1920 to create a federal cause of action for dependent survivors of seamen who died on the high seas. The Supreme Court has held that DOHSA preempts state causes of action in disputes arising from accidental deaths in non-territorial waters. *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986) (applying DOHSA to offshore helicopter crash). In contrast to *Tallentire*, however, the present causes of action arise not under domestic law but under the Warsaw Convention, an international treaty. Unlike *Tallentire*, therefore, the question before us is not whether to apply federal or state law, but rather which federal law to apply. In order to maintain a uniform law under the Warsaw Convention, we find general maritime law, rather than DOHSA, more appropriate. *See, e.g., Domanque v. Eastern Air Lines, Inc.*, 722 F.2d 256, 262 (5th Cir. 1984) ("[T]he Warsaw Convention and Montreal Agreement were intended to act as a uniform international law which supplants each member nation's varied laws.")

Under federal maritime law, the rule is well-established that only dependents may recover damages for loss of decedent's society. *Wahlstrom v. Kawasaki Heavy Industries, Ltd.*, 4 F.3d 1084, 1092 (2d Cir. 1993), *cert.*

denied, 114 S. Ct. 1050 (1994); *Anderson v. Whittaker Corp.*, 894 F.2d 804, 811-12 (6th Cir. 1990); *Sistrunk v. Circle Bar Drilling Co.*, 770 F.2d 455 (5th Cir. 1985), *cert. denied*, 475 U.S. 1019 (1986); *but see Sutton v. Earles*, 26 F.3d 903, 914-17 (9th Cir. 1994) (allowing nondependent parents to recover loss of society damages in general maritime action). No doubt this rule denies recovery to some deserving parties; nondependent survivors may feel the loss of a loved one as keenly as dependent survivors. However, the inherent concerns of vagueness and uncertainty "necessitate[ ] that we draw a line between those who may recover for loss of society and those who may not." *Miles v. Melrose*, 882 F.2d 976, 989 (5th Cir. 1989), *aff'd sub nom. Miles v. Apex Marine Corp.*, 489 U.S. 19 (1990). This distinction between dependents and nondependents has been commended "as the most rational, efficient and fair." *Miles*, 882 F.2d at 989.

In *Lockerbie II*, we extended to Warsaw Convention cases the general maritime rule limiting loss of society damages to dependents, *see* slip op. at 7844. Under that rule, Zicherman and Mahalek may recover loss of society damages only if they were dependents of Kole at the time of her death.

The test of dependency is the existence of "a legal or voluntarily created status where the contributions are made for the purpose and have the result of maintaining or helping to maintain the dependent in [her] customary standard of living." *Petition of United States*, 418 F.2d 264, 272 (1st Cir. 1969). Because Judge Motley did not explicitly instruct the jury to condition their awards for loss of society on finding such a status, we scrutinize the record

to determine what findings a jury could make on this issue.

KAL contends that, as a matter of law, Mahalek may not recover loss of society damages. The record shows that Mahalek offered no evidence to support a claim of dependency. Further, Mahalek specifically conceded on cross-examination her lack of dependence. Presented with such evidence, no jury could find Mahalek entitled to recover damages as a dependent. We reverse and vacate the award to Mahalek accordingly.

KAL further argues that the evidence submitted by Zicherman is insufficient to satisfy the test stated above. In contrast to Mahalek, Zicherman testified to generous financial assistance from Kole, including an offer to finance Zicherman's purchase of a house. Yet the record does not establish that Kole in fact financed such a purchase. Presented with such evidence, the jury could find the test of dependency satisfied, but it also could find this test not satisfied. We reverse and remand the award of loss of society damages to Zicherman, pending trial of this issue.

III.

Although federal maritime law permits dependent survivors to recover damages for loss of decedent's society, it precludes survivors from recovering additional damages for their grief or mental injury. *Mobile Oil Corp. v. Higginbotham*, 436 U.S. 618, 622 (1978); *Gaudet*, 414 U.S. at 585-86 n.17. Nonetheless, the district court determined that this rule was inapplicable to Warsaw Convention cases. *In re Korean Air Lines Disaster of Sept. 1, 1983*, 807 F.

Supp. at 1085-85. The court reasoned that the Warsaw Convention permits recovery for "damages sustained, and that the mental injury or grief of surviving relatives is one such species of damages.

We disagree. As we stated in *Lockerbie II*, federal maritime law supplies the measure of damages for injuries arising out of accidents governed by the Warsaw Convention. As federal maritime law does not permit surviving relatives to recover damages for mental injury or grief in addition to damages for loss of society, we reverse and vacate the awards to Zicherman and Mahalek for mental injury.

IV.

In order to recover for Kole's pre-death pain and suffering, Zicherman, as executrix, was required to provide evidence from which the jury could infer that Kole: (1) survived the missile explosions; (2) was conscious and aware for a period of time; and (3) experienced pain and suffering. To support the claim, Zicherman introduced the testimony of Foody and Elzy.

KAL contends that Zicherman did not satisfy her evidentiary burden because she offered no direct evidence on any of these points, and that the expert testimony was mere generalized testimony concerning the possible effects of a missile strike on a passenger-filled Boeing 747 flying at 35,000 feet. We disagree. Eyewitness testimony as to decedent's pain and suffering is not essential to recovery in fatal aircraft accidents, because such evidence "is difficult if not impossible to obtain." *Shatkin v. McDonnell Douglas Corp.*, 727 F.2d 202, 206 (2d

Cir. 1984). Obviously, it was impossible to produce such evidence in this case. Plaintiffs satisfied their burden by providing circumstantial evidence from which "it can reasonably be inferred that the passenger underwent some suffering before the impact." *Id.* A jury which accepted Foody and Elzy's testimony could reasonably infer that Kole remained conscious for a period of up to twelve minutes after the missile strike, during which time she experienced intense, decompression-induced pain. We affirm the award to Zicherman, as executrix of Kole's estate, for Kole's pre-death conscious pain and suffering.

V.

Damages for loss of support and loss of inheritance are well-recognized maritime remedies. *See Gaudet,* 414 U.S. at 584 & n.11 ("[r]ecovery for loss of support has been universally recognized"); *Nygaard v. Peter Pan Seafoods, Inc.,* 701 F.2d 77, 80 (9th Cir. 1983) ("loss of inheritance is a pecuniary loss recoverable under DOHSA"). Loss of support consists in "all the financial contributions that the decedent would have made to his dependents had he lived." *Gaudet,* 414 U.S. at 584-85. Recovery for loss of support "requires some showing of dependence on the deceased or an *expectation of support.*" *Bergen v. F/V St. Patrick,* 816 F.2d 1345, 1350 (9th Cir. 1987), *cert. denied,* 493 U.S. 871 (1989) (emphasis added). Thus, nondependents may recover for loss of support to the extent that they "anticipated future pecuniary benefits from support of services to be rendered to them by [the] deceased." *Wahlstrom,* 4 F.3d at 1093. In the present matter, a jury could find an expectation of future monetary gifts based on

Zicherman's close relationship with Kole and Kole's previous contributions.

Loss of inheritance is properly awarded where "it is probable that the decedent, but for his death, would have accumulated property that would have been inherited by the beneficiaries." *Nygaard*, 701 F.2d at 80. In order to recover, a survivor of the decedent must prove "a reasonable expectation of pecuniary benefit." *Snyder v. Whittaker Corp.*, 839 F.2d 1085, 1093 (5th Cir. 1988). In light of Kole's letter to Zicherman, she has satisfied that burden.

The awards for loss of support and loss of inheritance are affirmed.

VI.

In *Jones & Laughlin Steel Corp. v. Pfeifer*, 462 U.S. 523 (1983), the Supreme Court recognized that courts may discount damages to their present value to reflect the impact of inflation on future wages and prices. Traditionally, courts have used this technique in connection with awards to reflect foregone future wages or other future loss. *See, e.g., Chiarello v. Domenico Bus Services, Inc.*, 542 F.2d 883, 886 & n.4 (2d Cir. 1976). The district court discounted the entire award to the date of the accident, including that portion reflecting plaintiffs' loss between the date of the accident and the jury verdict, as a precursor to awarding prejudgment interest. We are not persuaded by the plaintiffs that the court should have discounted only that portion of the award reflecting future loss from the date of the verdict.

The calculation of prejudgment interest is a discretionary matter for the district court. *United States v. Seaboard Surety Co.*, 817 F.2d 956, 966 (2d Cir.), *cert. denied*, 484 U.S. 855 (1987). A jury verdict rendered in 1992 for an accident that occurred in 1983 may well reflect the inflationary impact of the intervening nine years; the court did not abuse its discretion. We affirm the district court's calculation of prejudgment interest.

The award to Zicherman as executrix of Kole's estate for Kole's pre-death pain and suffering, the awards to Zicherman for loss of support and loss of inheritance, and the court's calculation of prejudgment interest are affirmed. The awards to Zicherman and Mahalek for mental injury, and the award to Mahalek for loss of society, are reversed and vacated. The award to Zicherman for loss of society is reversed and remanded for proceedings not inconsistent with this opinion.

April 17, 1995

Zicherman v. KAL – Supreme Court: 94-1361

Supreme Court Decision: The petition for certiorari was granted. Limited to question 1 presented by the petition, i.e., **"MUST A SURVIVING PARENT OR SIBLING PROVE THAT THEY WERE FINANCIALLY DEPENDENT ON A DECEDENT IN ORDER TO RECOVER DAMAGES FOR LOSS OF SOCIETY UNDER THE WARSAW CONVENTION"**. Case is consolidated with #94-1477 (KAL v. Zicherman), A total of one hour is allotted.

Zicherman v. KAL – 94/1477

The petition is granted. The case is consolidated with Zicherman v. KAL. A total of one hour is allotted for oral argument.